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ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS

Situation of human rights in Somalia

Report of the Special Rapporteur, Ms. Mona Rishmawi, submitted in accordance with Commission on Human Rights resolution 1999/75

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Executive summary

Despite the serious human rights and humanitarian crisis many Somalis have to endure on a daily basis, civilians, in particular women, children and the intellectuals, aspire to live in a peaceful and stable Somalia ruled on a basis of dignity and respect.

During 1999, approximately half of the territory of Somalia has been peaceful, especially in the north, although the country has remained without a national government since 1991. The two northern territories, known as "Somaliland" and "Puntland", have made remarkable progress in maintaining and strengthening the atmosphere of peace and security that they had already established in the areas under their control. This has not been without some difficulties, however.

With the growing decline of the powers of the warlords and their defeat in several areas in the south of Somalia, such as Baidoa and Kismayo, much of the violence in the country now is criminal rather than political.

A new power has emerged in various parts of central and southern Somalia, particularly in the coastal areas, with the institution of shariah courts that are supported by their own militia. This system is finding financial support among the business community in order to clear the area of banditry and ensure security. There are no reports until now of corporal punishments having been handed down by these courts, instead detention, rehabilitation and re-education are employed. There is a degree of tranquillity and economic growth in the areas under the control of the shariah courts, mainly due to the deterrence of banditry.

There is also al-Ittihad, a religious fundamentalist group, that operates mainly in south-west Somalia and has a growing influence in "Puntland".

The recent initiative by President Ismail Omar Guelleh of Djibouti has raised hopes for ending the clan-based conflict in Somalia. In his speech before the United Nations GeneralAssembly on 22 September 1999, President Guelleh identified various phases for his plan. The initiative involves the convening of a reconciliation conference bringing together representatives of civil society and the warlords, the disarming of the faction leaders and the conversion of their factions into political parties that compete in elections. If this fails, the international community could take measures to prosecute the warlords for crimes against humanity, or other measures to bring to an end the gross violations of human rights committed in Somalia. The initiative of the President of Djibouti has the support of the international community, but more importantly, it has the support of the Somali people.

Many acts that could be qualified as war crimes or crimes against humanity are being committed now in Somalia, in particular in the south of the country. War crimes and crimes against humanity give rise to international criminal jurisdiction, either by an international criminal tribunal or by the exercise of universal jurisdiction by national courts. The independent expert encourages the authorities in foreign countries to take steps to bring to justice those

suspected of committing such crimes in Somalia. She reminds States that the United Nations Security Council, in its resolution 1265 (1999), emphasized the responsibility of States to end impunity and to prosecute those responsible for genocide, crimes against humanity and serious violations of international humanitarian law.

The report considers acts of violence against life, intentional attacks against the civilian population and objects, pillage, the conscription of children under 15, rape and other forms of sexual violence, the persecution of minorities, illegal ordering of the displacement of civilians and denial of due process. Most of the violations described in the report are taking place in the south and centre of the country.

The independent expert visited Baidoa on 17 and 18 November 1999. Aideed's militia held this town for the previous four years. During that time, allegedly, individuals were massacred, women were raped, wells were destroyed, villages were looted and burnt, and persons were allegedly detained without charge or trial. As a result, the town, mainly inhabited by the Rahanwein minority group, had been largely deserted.

The independent expert met with the leadership of the Rahanwein Resistance Army (RRA), which defeated Aideed, allegedly with military assistance from Ethiopia. She visited the village of Doynounay, one of the villages burnt during the time Aideed's troops were present in the area. On her way back to Baidoa, a military roadblock of two soldiers in military uniform stopped the independent expert's car. They were believed to be Ethiopians. Other soldiers in the nearby bushes were also believed to be Ethiopians.

The independent expert visited "Somaliland", an unrecognized entity in the north-west, which in 1991 separated from Somalia. She also visited "Puntland", in the north-east of the country, which still considers itself as a regional administration within Somalia. "Somaliland" and "Puntland" are now considered the most stable areas of Somalia. "Somaliland" has made the greater progress in this respect.

In "Somaliland" and "Puntland", the independent expert met with various officials. There is a sharp contrast between these territories and areas in the south, such as Baidoa. The two territories each have a regional administration, and a parliament, as well as a judicial system, albeit basic and often accused of corruption. They also have law-enforcement agencies, although they have no training and are sometimes accused of human rights violations, including torture. The prisons are functioning, but they are often crowded and half of the detainees are still awaiting trial, particularly in "Somaliland". There is a level of freedom of expression in both regions, "Somaliland" seems to be more advanced in this respect, but is not without problems. In "Puntland", there are reports of journalists being arrested for criticizing the administration. Local human rights groups exist in both regions; from time to time they are harassed and intimidated. There are also problems of discrimination against minorities and internally displaced persons.

The independent expert hopes that, with consolidated work in the field, the Commission on Human Rights and OHCHR will be able to give meaningful assistance to the people of Somalia in the area of human rights at this crucial period of their history. There are several possibilities for building a nucleus for human rights work in Somalia. Such work will advance peace and stability in the country, in addition to paving the way for better respect of human rights.

Several assistance programmes are already under way particularly in the northern areas. The various projects mentioned in the report highlight the need for enhanced coordination. A working strategy should be developed so that structured programmes within a coordinated framework, not piecemeal activities, are carried out. Enhanced coordination will lead to better rationalization of the use of the scarce resources available for Somalia. The arrival of the OHCHR officer with his significant human rights expertise should fill a major gap in the system.

The conclusions of the independent expert include a welcome for President Ismail Omar Guelleh's peace initiative, particularly his proposal for the possible trial of those suspected of war crimes and crimes against humanity. She stresses, however, that peace and justice should not be alternatives, but should go hand in hand. She also reminds States that the Security Council has imposed an arms embargo on Somalia and calls on them to respect this embargo. She reiterates what was already stated by the Security Council, that the continued supplying of arms to the various factions still fighting in Somalia impedes humanitarian aid, prolongs the conflict, puts the lives of civilians in jeopardy and undermines security and the confidence required for a return to peace and stability.

Lastly, the Independent Expert welcomes the placement by OHCHR of a human rights officer for Somalia in Nairobi, Kenya. She reiterates her belief that working close to Somalia, and in a sustained manner, will pave the way for more meaningful work on Somalia by the Commission on Human Rights and OHCHR. She calls on the various United Nations agencies operating in Somalia to facilitate the officer's task and on the donor community to support this important endeavour.

Introduction

1. At its fifty-fifth session, on 28 April 1999, the Commission on Human Rights adopted resolution 1999/75 in which it welcomed the report of the independent expert on the situation of human rights in Somalia (E/CN.4/1999/103) and, in particular, her conclusions and recommendations and took note with concern of the addendum to that report (E/CN.4/1999/103/Add.1), which contained a preliminary assessment of mass graves in the vicinity of Hargeisa, in north-west Somalia. The Commission also welcomed the decision of the United Nations High Commissioner for Human Rights to appoint a human rights officer in the framework of the office of the United Nations Resident Humanitarian Coordinator for Somalia in Nairobi, Kenya, and stressed the importance of implementing that decision. The Commission requested the independent expert to report on the human rights situation in Somalia to the Commission at its fifty-sixth session.

2. As a result, the independent expert has been following the implementation of the decision of the United Nations High Commissioner for Human Rights to appoint a human rights officer for Somalia. She is pleased to report that the officer was finally placed in Nairobi in October 1999 and immediately started his work. As will be discussed later, this appointment has filled a significant gap in the United Nations work in Somalia and has been much appreciated.

3. The independent expert has been following the developments in the human rights situation in Somalia. On a visit to the region from 14 to 24 November 1999, she went to Nairobi, where she met with representatives of the United Nations agencies dealing with Somalia, of Governments, of the International Committee of the Red Cross (ICRC) and of international non-governmental organizations working in Somalia. She then visited the town of Baidoa in the southern part of Somalia, "Somaliland" in the north-west and "Puntland" in the north-east. During her mission, the independent expert was accompanied by the OHCHR desk officer for Somalia and the newly-appointed human rights officer, now based in Nairobi.

4. The independent expert deeply appreciates the welcoming attitude and the warmth she has been met with while in Somalia. Despite the serious human rights and humanitarian crisis most Somalis have to endure on a daily basis, civilians, in particular women, children and the intellectuals, aspire to live in a peaceful and stable Somalia ruled on a basis of dignity and respect. The independent expert particularly appreciates the deep sense of pride that the Somali people share. She is grateful to all the Somalis who aided her during her mission. Special thanks are due to the Somali journalists, human rights defenders, women's groups, other NGOs and individuals. The independent expert is also grateful to all the Somali officials who facilitated her visit, met with her and provided her with useful information.

5. The independent expert is also thankful to the staff of all the international agencies who met with her, and in particular to the Special Representative of the Secretary-General in Somalia, Mr. David Stephen, and his staff for their enthusiasm and support for human rights work on Somalia. Mr. Stephen, invited the independent expert to attend a meeting organized by his office in Nairobi with representatives of Somali civil society on 16 November 1999 to discuss the initiative of President Ismail Omar Guelleh of Djibouti, which will be considered below. Mr. Stephen singled out the independent expert and welcomed her before the more than 500 participants. The independent expert greatly values this public support.

6. Thanks are also due to the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), and the World Food Programme (WFP) for sharing their insights and experience with the independent expert. Special thanks are due to UNDP, which made the administrative arrangements for the mission, and to UNICEF, which particularly facilitated her visit to Baidoa.

7. The independent expert also met with the representatives of Sweden and the United States of America in Nairobi. She is grateful to them for providing her with useful information and sharing their insights, activities and policies regarding Somalia.

8. In addition, the independent expert met with the representative of the European Commission - Somalia Unit, who also chairs the Somalia Aid Coordination Body (SACB), and his staff. SACB was created by virtue of the 1 December 1993 Addis Ababa Declaration of the Fourth Coordination Meeting on Humanitarian Assistance for Somalia, organized by the United Nations Operation in Somalia (UNOSOM). This body is a voluntary coordination body based in Nairobi. It comprises donors, United Nations agencies, NGOs and other international organizations and provides a framework for developing a common approach to the allocation of international aid to Somalia. The independent expert examined the role of this body in a previous report (E/CN.4/1997/88), particularly with respect to the Code of Conduct for International Rehabilitation and Development Assistance to Somalia, which establishes the link between humanitarian assistance and human rights.[1]

9. The independent expert particularly values the work of the ICRC and international non-governmental organizations in Somalia. She appreciates the deep, wise and useful analysis they provided to her during her mission.

I. THE SECURITY SITUATION

10. There are three major tendencies in Somalia today. The first could be characterized by the existence of relatively peaceful regions, particularly in the north of Somalia. The second is the decline in the power of the warlords. The third is the emergence of shariah courts, which are trying to fill the gap and maintain law and order.

11. During 1999, approximately half of the territory of Somalia has been peaceful,[2] especially in the north, although the country has remained without a national government since 1991. The two northern territories, known as "Somaliland" and "Puntland", have made remarkable progress in maintaining and strengthening the atmosphere of peace and security they had already established in the areas under their control. This has not been without some difficulties. In October 1999, for instance, there was an exchange of hand-grenades in the "Puntland" town of Galcayo. There was also violence in the demining project in "Somaliland", over its control. Furthermore, the two administrations are in dispute over the two regions of Sool and Sanag.

12. With the growing decline in power of the leaders of the conflict and their defeat in several areas in the south of Somalia, such as Baidoa and Kismayo, much of the violence in the country is now criminal rather than political. In his report to the Security Council of 16 August 1999, the Secretary-General stated that "a general review of the role of the

United Nations in Somalia, including the possible relocation of some United Nations programmes and agencies, as well as the Political Office, to Somalia" could be considered [3]. In fact, two thirds of the United Nations staff (national and international) working on Somalia are now already based inside the country, in particular in "Somaliland" and "Puntland" [4]. This is not without difficulty. From time to time United Nations staff have been considered persona non grata in some regions, as was the case in December 1999 in "Puntland".

13. As for the south, Gedo, Middle Shabelle and Lower Juba are still engulfed in serious conflict. The Somali capital, Mogadishu, continues to be torn among different groups. There is considerable banditry and fighting and casualties among United Nations national staff are increasing. While the power of the traditional faction leaders seriously declined during 1999, owing to their defeat on various fronts, they still have a significant following in Somalia, despite the fact that Mr. Ali Mahdi has been in Cairo and Mr. Aideed has been in Nairobi for almost a year. There is total anarchy in the capital. The Islamic courts, which will be elaborated on below, have been trying to fill the vacuum in authority, initially in south Mogadishu and now extending towards the north of the town. Heavy fighting for control of the port broke out on 23 November 1999 between the shariah court-supported Abgaal-Harti Warsengeli militia and the militia of the two warlords, Musa Sudi and Ali Mahdi Mohammed [5].

14. General Hersi Morgan was defeated in the strategic southern agricultural port of Kismayo in June 1999. He is now living in Baidoa and enjoys the support of the Rahanwein Resistance Army (RRA), as well as the leadership in "Puntland". The situation in Kismayo is currently tense. "Intermittent conflict between the Marehan and the Haber Gedir militia on the one hand, and the four Marehan factions competing for leadership on the other hand has contributed to an environment of anarchy. There is no effective leadership, and kidnap, ransom, rape and murder are common occurrences. Medecins Sans Frontieres (MSF)-Belgium has not returned to the city due to the security situation" [6]. In fact, there is a major difficulty in delivering supplies to the health centres in the town.

15. With military backing from Ethiopia, the RRA, which was established in 1995, has been able to gain control over large parts of Bay and Bakool and defeat Mr. Aideed's militias, which were backed by Eritrea. There are claims of an Ethiopian military presence in these territories and some Ethiopian soldiers were observed in Baidoa. There are also claims of Ethiopian troops in the western parts of Somalia. The objectives of the Ethiopian presence in Somalia seem to be to crush Ethiopian Oromo armed opposition groups, which are supported by Aideed, and to defeat fundamentalism in the western regions of Somalia. Some reports indicate that certain elements in Mogadishu are criticizing the United Nations for "preferring to conduct assistance operations in Ethiopian-occupied areas of Somalia" [7].

16. The areas under RRA control still lack administration and there are differences within the RRA leadership. There have been some developments in terms of peace initiatives among the clans in the Hiran region. Galgadud has also experienced some stability, with no major clashes lately.

17. As was mentioned above, a new power has emerged in various parts of central and southern Somalia, such as in the towns of Merka, Brava and Coryoley. This is the institution of

shariah courts, supported by their own militia. Unlike other powers in Somalia, those in charge of these courts are not so much interested in creating a regional government or administration, rather, they are interested in the judiciary.

18. Those in charge of these courts claim that they do not have any affiliation with the warlords, or with al-Ittihad, a religious fundamentalist group that operates mainly in south-west Somalia and has growing influence in "Puntland". Both the shariah court officials and al-Ittihad cut across the clan system that has prevailed so far. In fact, there seems to be some rivalry between the Islamic courts and al-Ittihad, this rivalry should not be underestimated. Both are being provided with financial support from the business community in order to ensure security and clear the area of banditry and of the militia, who have been collecting sums of money at road blocks.

19. Although the shariah courts' agenda seems to focus on the enforcement of the shariah for all, there are no reports until now of corporal punishments being handed down by these courts. Instead, they employ detention, rehabilitation and re-education. There is a degree of tranquillity and economic growth in the areas under the shariah courts' control, mainly due to the absence of banditry. Relations with the United Nations agencies and the relief community seem to be generally cordial as they have been able to continue their work in these regions.[8]

20. The Islamic courts in Merka have apparently requested United Nations support for vocational training of the captured and convicted militia and bandits. Eighty-eight individuals were said to have been tried by these courts. 22 were acquitted and 66 convicted. The 66 prisoners have been sentenced for a period of up to one year. The shariah militias feed them and train them in shariah law, and literacy in the Somali language.[9]

21. Some international relief work is carried out in the areas controlled by Al-Ittihad. Relations with the United Nations and the international community seem to be tense, however. It is not possible to deploy female international staff.

II. THE POLITICAL SITUATION

22. The recent initiative by President Ismail Omar Guelleh of Djibouti has raised hopes for ending the clan-based conflict in Somalia. In his speech before the United Nations General Assembly on 22 September 1999,[10] President Guelleh identified three phases for his plan. The first phase involves the convening of a reconciliation conference, with representatives of civil society and the warlords coming together to commit themselves to the path of peace and national reconciliation. During this phase, the warlords are called upon to disarm and "to convert their factions into political parties that compete in elections, if they choose to do so". The second phase involves the prosecution of the warlords for crimes against humanity, if they do not accept to participate in the first phase of the process. The third phase calls for action, primarily by the Organization of African Unity (OAU) and the League of Arab States, with support from the United Nations, so that the warlords would not be allowed "to continue indefinitely to commit flagrant violations of human rights and to hold [the] country hostage for ever".[11]

23. The independent expert welcomes this significant initiative, which differs from the previous peace attempts for Somalia in its focus on civil society. Her only concern is that peace and justice should go hand in hand, not be alternatives to each other. In the context of Somalia, where serious violations of human rights and humanitarian law rise to the level of war crimes and crimes against humanity, ending impunity for such crimes by prosecuting those who commit them should be among the main objectives of all States and an integral part of, not an alternative to, a peace plan. The Security Council emphasized this principle in its resolution 1265 (1999) of 17 September 1999 on the protection of civilians in armed conflict.

24. The public stand President Ismail Omar Guelleh has taken against the warlords with his initiative has contributed to the crumbling of their power. The initiative has the backing of the Inter-Governmental Authority on Development (IGAD) and the League of Arab States. More importantly, the initiative enjoys wide support among Somalis. When President Guelleh's speech was brought to the attention of the Somali people by the BBC Somali Service, people in various parts of the country, particularly Mogadishu, took to the streets in support of his initiative.

25. On 16 November 1999, while in Nairobi, the independent expert attended a meeting organized by UNPOS and chaired by the Special Representative of the Secretary-General for Somalia. It was attended by around 500 Somalis, including representatives of the various factions, of civil society groups and of the Somali business community, and Somali intellectuals. Various representatives of the international community also attended.

26. During this meeting wide support for President Guelleh's initiative was expressed, including by the various political factions. President Guelleh's ethnic Somali origin was frequently cited to emphasize their appreciation for his understanding of the situation in Somalia, his concern and commitment to find a just solution to the conflict, as well as his courage.

27. The role of the BBC Somalia Service, which spread the news of the initiative, was particularly acknowledged during the meeting. There was a great sense of hope expressed by the various speakers that Somalia might finally be moving more steadily towards peace. President Guelleh's emphasis on the organizations of civil society was particularly appreciated and it was stressed that it provided the first opportunity for civilians to express their views.

28. Participants in the meeting also expressed fear that the Djibouti initiative could also be the last attempt by the international community to achieve peace in Somalia. There was concern that, should it fail, Somalis would lose hope and turn to Islamic fundamentalism. In this respect, there were calls upon the international community to pursue a unified and coordinated stand on Somalia and to stop legitimizing the warlords by "hosting them in expensive hotels in various capitals".

29. Much emphasis was placed on the importance of respecting the arms embargo imposed on Somalia by the Security Council since 1991, and on disarming the militias, as proposed by President Guelleh in his initiative.

30. Several Somali women attended the meeting and spoke clearly and firmly in favour of peace and reconciliation.

31. In the past, several initiatives have been sponsored by IGAD, the League of Arab States or others with regard to the Somali conflict. The previous initiatives, which all failed, emphasized bringing peace among the warlords, rather than the Somali population. This is the first initiative that focuses on the elements and forces of civil society in Somalia.

III. LEGAL FRAMEWORK

32. Many atrocities that could be qualified as war crimes and crimes against humanity are frequently committed in Somalia, particularly in the south. War crimes and crimes against humanity give rise to international criminal jurisdiction, either by an international criminal tribunal, or by the exercise of universal jurisdiction by national courts. Until the time comes when an international criminal tribunal has a mandate to try those suspected of committing war crimes and crimes against humanity in Somalia, national courts, in countries where such suspects are said to live or frequently to travel to, such as Djibouti, Canada, Egypt, Ethiopia, Kenya, Italy, the United Kingdom, the United States of America and Yemen, can bring them to justice. The independent expert encourages the prosecuting authorities in these countries to take steps in this regard. She reminds States that the Security Council, in its resolution 1265 (1999) on the protection of civilians in armed conflict, emphasized "the responsibility of States to end impunity and to prosecute those responsible for genocide, crimes against humanity and serious violations of international humanitarian law".

33. As for what constitutes war crimes or crimes against humanity in the Somali context, the independent expert has been asserting that international humanitarian law relating to non-international armed conflict applies in the whole territory of Somalia, irrespective of whether a specific area is engulfed in active fighting or not. This application extends to the "Puntland" regional government in the north-east, which considers itself part of Somalia, as well as to "Somaliland", which is asserting independence, although there is no international recognition of its separate status.

34. As a result, all parties to the conflict are bound by the laws and customs applicable in armed conflicts not of an international nature. These principles are mainly aimed at protecting the civilian population. They prohibit deliberate attacks upon civilians and outlaw indiscriminate attacks. They forbid attacks on non-military objectives and require precautions when attacking military targets. Three main bodies of rules are essential in this respect.

35. First, article 3 common to the four Geneva Conventions of 12 August 1949 spells out elements that were considered by the International Criminal Tribunal on the Former Yugoslavia as constituting war crimes. It reads:

> "... each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for."

36. Second, the Statue of the International Criminal Court, adopted in Rome on 17 July 1998, provides further indications as to what constitute customary international law norms with regard to war crimes committed in an armed conflict not of an international character. The Statute thus sheds light on additional crimes under customary international law with regard to Somalia. Under article 8.2 (e) of the Rome Statute the following acts are considered as war crimes:

"(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nation, as long as they are entitled to the protection given to civilians or civilian objects under the law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f) [of the Statute], enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental, hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict."

37. Third, the Rome Statute provides indications as to what constitutes crimes against humanity, which are also prohibited by customary international law. They are enumerated in article 7.1 of the Statute:

"(a) murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3 [of art. 7], or other grounds that are universally recognized as impermissible under international law ...;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health."

The definition of some of these crimes is elaborated further in the Statute.

38. In its resolution 1265 (1999), the Security Council spelled out rules with regard to the protection of civilians in armed conflicts. The Council expressed grave concern at "the hardships borne by civilians during armed conflict, in particular as a result of acts of violence directed against them, specially women, children and other vulnerable groups, including refugees and internally displaced persons". It emphasized the responsibility of States to end impunity and to prosecute those responsible for crimes against humanity and other serious violations of international humanitarian law, underlined the "importance of safe and unhindered access of humanitarian personnel to civilians in armed conflict ... and the protection of humanitarian assistance to them", emphasized the need "for combatants to ensure safety, security and freedom of movement of United Nations and associated personnel, as well as personnel of international humanitarian organizations", expressed "its willingness to respond to situations of armed conflict where civilians are being targeted or humanitarian assistance to civilians is being deliberately obstructed", noted that the destabilizing effect of small arms and light weapons posed a considerable impediment to the provision of humanitarian assistance and had a potential to exacerbate and prolong conflicts, endanger the lives of civilians and undermine security and the confidence required for a return to peace and stability, and reiterated its grave concern at the harmful and widespread impact of armed conflict on children.

39. These are significant principles that should be kept in mind by the parties to the Somali conflict, by States and by international organizations. They reflect the determination of the international community to deal seriously with the impact of conflict on civilians and to take measures to protect civilians, including prosecuting those who commit crimes against humanity and other relevant international crimes, and intervening to ensure that civilians and humanitarian aid to them are not deliberately targeted during conflicts.

IV. RESPECT FOR HUMAN RIGHTS AND HUMANITARIAN LAW

40. In this section, the independent expert will consider how some of the fundamental principles mentioned above are being violated in Somalia. As was emphasized earlier, war crimes and crimes against humanity could provoke international criminal prosecution either through an international tribunal or by national courts in neighbouring or other countries through the exercise of universal jurisdiction. Most of the violations described below are taking place in the south and centre of the country.

A. Violence against life

41. The right to life is among the rights most violated in Somalia. The taking of life is common practice. The independent expert received chilling allegations during her visit to Baidoa regarding the massacre of civilians by Aideed's militias during the battle over the town with the RRA. On 24 February 1999, an RRA spokesman told Agence France Presse (AFP) that 40 civilians were killed in Baidoa and the neighbouring village of Doyounay in one weekend. During her visit to Somalia in November 1999, the independent expert visited the village and was told that, during the invasion of the village by Aideed's group, about 60 individuals had been rounded up and taken to Baidoa, where they were shot. The independent expert met with an individual who claimed that he had survived the massacre only because the militiamen thought that he was dead. He showed the independent expert what appeared to be bullets which were still in his body. During this time women were allegedly raped, wells were destroyed, and the village itself was burnt.

42. As was stated earlier, the United Nations reported in November 1999 that kidnapping, ransom, rape and murder are common occurrences in Kismayo.[12]

43. The situation in Mogadishu is serious. The town is now mostly controlled by banditry and fighting. There are intentional attacks against the civilian population and objects, which constitute war crimes, as set out above (para. 53). The increase in casualties among the United Nations national staff, inflicted by the militia and bandits, has led the United Nations to consider elaborating strategies for collecting evidence, identifying criminals and establishing responsibility. Various legal avenues are being explored to bring the perpetrators to justice.[13]

44. During the battle over Kismayo and in the Juba Valley between General Morgan and Somali National Front (SNF)/Somali National Alliance (SNA) militia, there were allegations that each side had massacred dozens of captured militiamen. Some of the captured militia were held in the Kismayo hospital, which was previously run by MSF.

45. On 17 January 1999, an unknown number of individuals were apparently killed or injured when inter-clan fighting broke out in Jamame district, about 70 km north of Kismayo, between Sheikhal and Biyomal clansmen. Reports indicated that clan elders have since started to negotiate a settlement.

B. Intentional attacks against the civilian population and civilian objects

46. As is apparent from the previous section of the present report, intentional attacks against the civilian population and civilian objects, which constitute war crimes, are frequently carried out in Somalia. Commercial vessels are also often seized, sometimes for political reasons, but often for ransom.

C. Pillage

47. Pillage and looting are a common practice. In November 1999, humanitarian relief material was looted near Baidoa from UNICEF. When the independent expert visited Baidoa, the head of UNICEF Somalia was holding a high-level meeting with the RRA leadership to

ensure that such actions would not be repeated in the future. Around the same time, the compound of MSF-Holland in Galcayo, "Puntland", was invaded by unknown armed men and looted. Following this incident, MSF stayed out of Galcayo because of the poor level of security there.

D. The conscription of children under 15

48. In many parts of Somalia, children under the age of 15 are recruited by the militias. Some faction leaders recruit children as young as 10 years of age to serve as their personal bodyguards.

E. Rape and other forms of sexual violence

49. Rape and other forms of sexual violence are often reported. There are many allegations of rape, particularly in the Kismayo area, as well as in and around Baidoa during Aideed's four years of control over the town.

F. Persecution

50. This crime against humanity is defined in the Rome Statute as "persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender ... or other grounds that are universally recognized as impermissible under international law". There is systematic discrimination against minorities. In her report to the Commission on Human Rights at its fifty-fifth session (E/CN.4/1999/103) the independent expert explored the situation of minorities, particularly the Bantus. The situation remains unchanged. Bantus continue to be forced off their land, their property continues to be looted and their villages destroyed.

G. The illegal ordering of the displacement of civilians

51. Displacement is a major problem in Somalia. The illegal ordering of the displacement of civilians constitutes a war crime, as was stated above. Somalis in the conflict areas are often either chased away from their normal place of residence or are forced to flee because of the conflict. The situation of the internally displaced is described further below. In this respect, the independent expert wishes to draw attention to the Guiding Principles on internal displacement prepared by the Representative of the Secretary-General on internally displaced persons and contained in document E/CN.4/1998/53/Add.2. The 30 Guiding Principles address the specific needs of the internally displaced and identify the rights and responsibilities relevant to their protection. The Principles were welcomed by the Inter-Agency Standing Committee (IASC), which encouraged its members to share them with their Executive Boards for further dissemination.

52. Principle 3 states:

> "National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

> "Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request."

Principle 5 states:

> "All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons."

53. The independent expert highlighted the situation of Somali refugees in Djibouti, Ethiopia, Kenya, and Yemen in her previous report. She also stressed that the Office of the United Nations High Commissioner for Refugees (UNHCR), which continues to assist Somali refugees, insists that it cannot force individuals to go back to Somalia because of the situation of conflict, but applies a policy of voluntary repatriation. As was clarified before, those who ordered the displacement could be tried for committing war crimes. The independent expert wishes to take this opportunity to highlight some other issues relating to the situation of the refugees themselves.

54. On 12 October 1999, the independent expert issued a statement expressing concern over proposed European Union (EU) policy on Somali refugees. She called upon the European leaders meeting in Tampere, Finland, on 15 and 16 October 1999 not to adopt an asylum policy that could put the human rights and fundamental liberties of Somalis in further jeopardy.[14]

55. A draft plan of action for Somalia was put before that meeting of the EU Council of Ministers. The draft plan considers that, while there is no central government in Somalia and most of the country is engulfed in conflict, there are some "peaceful" areas. Although acknowledging that the absence of a central government means there is in practice no national guarantee for the protection of human rights on the basis of international law and a Constitution, the draft plan recommends that the EU enter into "constructive dialogue" with the authorities in different regions, particularly in the north, to agree on arrangements for identification and documentation of returnees to respective areas. The plan would not grant recognition to these regions.

56. The independent expert expressed alarm at the content of the draft plan, which, she said, would make it difficult for Somalis to seek asylum in EU States. She called upon those States not to force individuals to return to Somalia in the absence of recognized structures in Somalia that the international community could formally call upon to protect the human rights of returnees. The independent expert also highlighted the fact that the number of Somalis seeking asylum in EU countries is very small in comparison with those who are hosted in countries neighbouring Somalia and pointed out that millions of Somali refugees live in refugee camps run by UNHCR in Kenya, Ethiopia, Djibouti and Yemen.

57. The independent expert said that the draft plan had some positive aspects, nonetheless, and she welcomed such recommendations for improving the human rights situation in Somalia as those related to providing support for the work on the country by OHCHR, which will be elaborated on below.

58. While in Nairobi, the independent expert met with officials at the Embassy of Sweden, with whom she discussed, inter alia, the situation of Somali refugees in Sweden. A Swedish official told her that there had been four cases of forced return of Somalis to Somalia from Sweden. She was informed that the cases involved individuals accepted by Sweden on humanitarian grounds who had been convicted of crimes in Sweden. They were repatriated through Dubai or Djibouti.

59. The independent expert was also informed that there had been cases of voluntary repatriation of Somalis who had already acquired permanent residency status in Sweden. Sweden provides a standard sum of US$ 1,200 per individual or US$ 5,000 per family, as general assistance to those who would like to be repatriated. There are 14,000 to 15,000 Somalis in Sweden.

60. On 29 November 1999, the independent expert attended a hearing organized by the Committee on Human Rights and Humanitarian Aid of the German Parliament (Bundestag) on non-State persecution and refugees. The independent expert was requested to address issues relating inter alia to the categories and patterns that could distinguish non-State persecution as well as gender-specific persecution in the context of refugee laws. The independent expert focused her attention on the situation of Somali refugees.

61. Further analysis of the question of Somali refugees in Europe was provided in the independent expert's report to the Commission on Human Rights at its fifty-fifth session (E/CN.4/1999/103).

H. The denial of due process

62. The independent expert wishes, lastly, to highlight the crime of denial of due process, which is listed in common article 3 of the Geneva Convention, as well as in the Rome Statute, which consider as a war crime "The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

63. Several irregular courts are in operation throughout Somalia. They include the shariah courts in south and central Somalia, and the court structures in "Somaliland" and "Puntland". Without judging the functioning of these courts at this stage, as this requires in-depth examination and thorough field research, the independent expert wishes to point to some indicators that could be considered in the determination of the crime of denial of due process. These indicators could serve also as a basis for those who wish to assist the administration of justice in Somalia - and there are a few, as is elaborated below in the section on "Building a human rights nucleus in Somalia" - so that war crimes are not committed in this area.

64. During the elaboration of the elements of the crime of denial of due process by the Preparatory Commission for the Establishment of the International Criminal Court,[15] it was suggested that the "judicial guarantees which are generally recognized as indispensable" could include: the right to a fair and public hearing by an independent and impartial tribunal established by law, including the right of access to a court; the right to be informed of the charges against him/her without delay; the right to be afforded before and during the trial all necessary rights and means of defence, which includes the following pre-trial and trial minimum guarantees: the right to be brought promptly before a judge or other officer authorized by law to exercise judicial power; the right to be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of detention and order release; the right to have adequate time and facilities for the preparation of one's defence and to communicate with counsel of one's choosing; the right to defend oneself in person or through legal assistance; the right to be tried without undue delay; the right to present and examine witnesses; the right to an interpreter; no one shall be convicted of an offence except on the basis of individual penal responsibility; the principle of nullum crimen, nulla poena sine lege and the prohibition of a heavier penalty; the right to be presumed innocent; the right to be tried in one's presence; the right not to be compelled to testify against oneself or to confess guilt; the right to be advised of one's judicial or other remedies and of the time-limits within which they may be exercised; the right to have the judgment pronounced publicly; the principle of ne bis in idem.[16]

V. THE VISIT TO BAIDOA

65. The independent expert visited Baidoa on 17 and 18 November 1999. Aideed's militia had held this town, which was dubbed, during the peak of the Somali famine, "the city of death", for the previous four years. During this period, the people of Baidoa and its surroundings left. Allegedly, individuals were massacred, women were raped, wells were destroyed, and villages were looted and burnt. Persons were allegedly detained without charge or trial, sometimes in containers. Their families were forced to pay to secure their release. As a result, the town, mainly inhabited by Rahanweins, was largely deserted. The Rahanwein are a minority group in Somalia, who have been widely discriminated against.

66. After several years of fighting, the RRA, which was formed in 1995, took control of the town in June 1999, apparently with the military support of Ethiopia, and defeated Aideed's group. At the time of the independent expert's visit, the inhabitants of Baidoa had started returning to it. They were mending their homes and resuming their normal life.

67. The independent expert met with the leadership of the RRA. The RRA Chairman, Mr. Hassan Mohammed Nur, known as 'Shatti Gudud', is a legally trained Rahanwein Somali, who served at one time as the head of Siad Barre's Security Court. The independent expert, who has reported in previous years on the bleak human rights situation in Baidoa during the time Aideed's militia were in control there, explained her mandate. The RRA expressed appreciation to the expert for her previous reports and provided her with further details of the death and destruction caused by Aideed's militia in the area. The need to establish accountability for what happened was particularly stressed.

68. The RRA referred to the situation of the internally displaced persons from the Lower Shabelle region who are coming to Baidoa. The harsh conditions in the town make their absorption difficult. The RRA also emphasized that the Rahanwein in Lower Shabelle are still living under oppressive conditions.

69. The RRA seems to have plans to establish a form of administration in the area. Some internal tensions within the RRA ranks appear to be delaying the establishment of such a regional administration, however. The RRA priority seems to be to defeat Aideed's groups, particularly in the Lower Shabelle region towards the coast.

70. There continue to be many child soldiers in the area. Women also take part in militia activity, which is unusual in Somalia.

71. During the fighting between Aideed's troops and the RRA, both sides captured prisoners, the RRA even capturing Aideed's wife. Most of the prisoners were released, one remains in Baidoa. The RRA proposed that the independent expert meet this prisoner. This visit did not take place, however, for logistical reasons pertaining to the RRA.

72. Concerning the initiative of the President of Djibouti, the RRA representatives told the independent expert that they found many positive elements in it, but were mainly concerned about representation; some areas where there were Rahanweins were currently controlled by Aideed. They said that they had sent their comments and proposals to President Guelleh.

73. Accompanied by the RRA, the independent expert visited the village of Doynounay, on the way to Mogadishu. She was told that, in the past, Doynounay had been one of the main commercially important villages around Baidoa. During the time Aideed's troops controlled the area, the village was allegedly looted and burnt. The only building spared was said to have been the mosque. The village has now been entirely rebuilt. When the independent expert visited it, a few traces of the burning could be seen.

74. Many serious violations allegedly took place in Doynounay. As mentioned above (para. 41), the independent expert met a man who had allegedly survived a massacre. He told her that about 60 men from the village were rounded up and taken to Baidoa, where they were shot. He said that he had survived the massacre because the militiamen thought that he was dead. He showed the independent expert what appeared to be bullets that were still in his body. During that time, women were allegedly raped, wells were destroyed and the village itself was burnt.

75. Other stories of mass killings and destruction were also told. One woman told the independent expert that one night about 20 men arrived at the village and entered her house. She was raped and shot. She lost so much blood that her arm had to be amputated.

76. The independent expert was also informed that some individuals from the village were also imprisoned and subsequently released after paying 60,000 Somali shillings.

77. On the way back to Baidoa, two soldiers in proper military uniform stopped the independent expert's car at a military roadblock. They were believed to be Ethiopians. One

soldier approached the car and, despite the intervention of the RRA representative, inspected it, before eventually allowing it to continue. There were other soldiers in the nearby bushes, also believed to be Ethiopians. The RRA commander who accompanied the independent expert said, however, that the soldiers belonged to the RRA.

VI. THE VISIT TO "SOMALILAND"

78. The independent expert visited Hargeisa in "Somaliland" from 18 to 20 November 1999. This was her fourth visit to "Somaliland" since taking on this mandate in December 1996.

79. In 1991, when the central Government in Somalia collapsed, "Somaliland" declared itself independent and sought separation from Somalia, citing the massive discrimination its people had suffered during the regime of Siad Barre. Although, the international community and the United Nations, which upholds the territorial integrity of Somalia, have not recognized the separate status of "Somaliland", the international community has acknowledged with deep appreciation the good level of security and stability that "Somaliland" has achieved over the years. The continued increase in the level of stability and improvement in the quality of life of the residents of "Somaliland" impressed the independent expert.

80. Upon her arrival, the independent expert convened a round-table discussion, which was attended by the "Minister of Justice", the "Deputy Speaker" of the "Parliament", the Chairperson and some members of the Technical Commission for the Investigation of War Crimes, as well as representatives of non-governmental organizations and the press. The "Minister of Justice" was new. This is the third different "Minister of Justice" the independent expert has met in two years.

81. In addition, the independent expert met informally with the "Minister for Foreign Affairs" and the "Minister of Aviation". The independent expert also visited the courts. There was a new "President of the Supreme Court", who was hostile and combative. Although concerned about the continued reshuffling of officials, which affects the continuity of discussions and follow-up, the independent expert appreciates the constructive dialogue she had with the officials in "Somaliland". After her return to Geneva, the independent expert wrote on 26 November 1999 to Mr. Mohammed Ibrahim Egal, the "President" of "Somaliland", inquiring about some of the issues raised during the visit. As of 15 December 1999, the date on which she submitted the present report to OHCHR, no response had been received.

82. There follows a description of the issues that were raised during these discussions. For the stable regions, such as "Somaliland" and "Puntland", the independent expert will use the elements of democracy that were elaborated in Commission on Human Rights resolution 1999/57, as a standard and indication of good government. These elements include: respect of the rights to freedom of opinion and expression, of thought, conscience and religion, and of peaceful association and assembly; respect of the right to freedom to seek, receive and impart information and ideas through any media; respect of the rule of law, including legal protection of citizens' rights, interests and personal security, and fairness in the administration of justice and independence of the judiciary; respect of the right of universal and equal suffrage, as

well as free voting procedures and periodic and free elections, respect of the right of political participation, including equal opportunity for all citizens to become candidates, the existence of transparent and accountable government institutions, respect of the right of citizens to choose their governmental system through constitutional or other democratic means.

A. The laws

83. The "Somaliland" legal system is based on a combination of shariah, English, Egyptian and Siad Barre era traditions. Owing to the multiplicity of references, the system is extremely confusing and considered archaic.

84. "Somaliland" now has an active elected "House of Representatives". The "Deputy Speaker" of the "House of Representatives" told the independent expert of the need to update the "Somaliland" laws in the light of international human rights standards. Facilitating that task is the fact that the Universal Declaration of Human Rights is already available in Somali and is known in "Somaliland", as it was referred to in the Constitution of Somalia as a basis of governance. A legal committee within the "House of Representatives" mostly considers constitutional matters. Only two members of "Parliament" are qualified lawyers, however.

85. In this context, the independent expert welcomes the repeal of the emergency law by the "Parliament". A new public order law is being drafted, however. The independent expert requested that a copy of this draft be sent for comments to the human rights officer in Nairobi.

86. Several other draft laws are being considered - on political parties, elections, the press and land dispute management.

B. The Judiciary

87. According to the "Minister of Justice", in "Somaliland" there are a total of 50 judges, 7 of them in the "Supreme Court", 17 district attorneys and 106 supporting staff. A judicial service commission has been created, composed of three "Supreme Court judges", the "Attorney General", the Director-General of the "Ministry of Justice" and four members of "Parliament".

88. The court system is spread out throughout the region. The resources allocated to the judiciary are inadequate, however. The independent expert was told that, during the ban on the export of livestock, the budget allocated to the judiciary would not even cover the purchase of stationery, which was therefore hardly ever available. The judicial system generates some income from court fees, collected by the "Ministry of Finance".

89. The "Parliament" has apparently recently debated the annual budget. Despite the poor court conditions, only about half of one per cent of the total budget was allocated to the judiciary, while about 70 per cent was allocated to the police and armed forces. The courts were consulted when the budget was discussed in "Parliament" through the "Head of the Supreme Court".

90. The difficult working conditions of the courts are reflected in the small salaries received by judges in comparison to those of ministers and members of "Parliament", and the lack of access to laws and codes. The salary of a judge amounts to US$ 15 a month. Although an increase has repeatedly been requested, it has never been granted, in spite of the fact that parliamentarians have just approved an increase in their own salaries from US$ 300 to US$ 400. It was said that the "Government" opposes any increase in judges' salaries, possibly for political reasons.

91. The independent expert wishes to stress that low judicial salaries constitute an invitation for corruption. The low budget allocation reflects the low status of the judiciary in the "Somaliland" administration. This is ironic, as the judiciary is a major stabilizing factor, facilitating the peaceful resolution of conflicts. In a letter to Mr. Egal, the "President" of "Somaliland" the independent expert urged him to reconsider the situation and order that at least 10 per cent of the budget be allocated to the judiciary to allow it to perform its functions adequately.

92. The independent expert visited the "Supreme Court" on 20 November, after informing the "Ministry of Foreign Affairs" of her intention to do so. The main purpose of her visit to the court was to update herself on the situation of justice. The staff and members of the Supreme Court whom she met were helpful and pleasant.

93. The independent expert was informed that 86 civil cases were filed with the Supreme Court during 1999 (56 concluded and 30 pending), and 18 criminal cases (11 concluded and 7 pending). In addition, 11 administrative cases were filed in this court in 1999 (9 concluded and 2 pending). The independent expert was told that constitutional cases were rare. They usually concerned disputes connected with electoral matters.

94. During the visit, the new "President" of the "Supreme Court", Mr. Mohammed Hagi Saeed, was not in his office. He arrived as the independent expert was about to leave. Unfortunately, he was hostile and unwelcoming.

95. The court conditions are extremely poor. Various individuals the independent expert met stressed that most judges in "Somaliland" lacked adequate qualifications, and stressed the need for appropriate training, adequate material and legal texts.

C. The lawyers

96. There are a number of qualified lawyers practising in "Somaliland", but there is no bar association. A vibrant and independent bar would be a positive catalyst for the establishment and institutionalization of the rule of law. The "Parliament" has already passed a bar association law. This law was presented to Mr. Egal's office for promulgation. This has not taken place, however. The independent expert raised this issue with Mr. Egal in her letter of 26 November 1999.

D. Prisons

97. It seems that there are currently no political prisoners in "Somaliland". The independent expert has already welcomed this fact in her previous report to the Commission on Human Rights (E/CN.4/1999/103).

98. There is, however, another problem: about half of the detainees in "Somaliland" are still awaiting trial. Some are not even charged as the judicial system has not been able to process their cases in court adequately and effectively.

99. The "Minister of Justice" informed the expert that there are currently nine detention facilities in "Somaliland", as a new prison has been opened in Sool, an area disputed with "Puntland". There are, 1,250 wardens and about 2,000 inmates in "Somaliland".

100. According to human rights defenders, conditions in prisons continue to be harsh. Health conditions are poor. In February 1999, there was an outbreak of cholera at the prison in Hargeisa and more than 29 persons had to be hospitalized.

101. Owing to the lack of mental hospitals, mentally disturbed persons are held in jail. In this connection, it was reported that post-traumatic stress disorders are widespread in "Somaliland".

102. In her previous report (E/CN.4/1999/103), the independent expert raised the case of two persons from Cameroon who had been held in Hargeisa prison since September 1998. She was informed by human rights defenders that they were apparently still detained, without charges and with no opportunity to seek legal aid.

E. Freedom of expression

103. "Somaliland" enjoys a certain degree of freedom of expression, but more can be done in this respect. The "Parliament" is now debating a press law that is not accepted by journalists. They have already submitted their comments to the "Parliament" and provided a copy of these comments to the independent expert. They acknowledged that the law contains several positive elements, but had two major objections concerning the broad provisions relating to defamation, and the process of licensing that they said allows governmental control over the press.

104. The "Government" argues that journalism in "Somaliland" is young and immature and therefore harm is being caused to the reputation of some individuals through the press. Journalists respond that the answer could be self-regulation through a code of ethics and the creation of a journalists' association that would enforce such a code. They insist, however, that only the independent press should be part of this association. Some journalists have asked for models of codes of conduct for journalists.

105. In her letter to Mr. Egal, the independent expert stressed that while freedom of speech could be regulated, regulation should not empty this freedom of its content. She requested a copy of the proposed legislation for the OHCHR human rights officer to study and comment on.

F. Protection of human rights defenders

106. There are two human rights groups operating in "Somaliland", the Somaliland Horn Watch and the Guardians of Civil Liberties. They operate with relative freedom. The independent expert was disturbed to learn, however, that Mr. Suleiman Ismail Bolaleh, of Somaliland Horn Watch, had been arrested and had spent four days in jail when his organization was investigating some torture allegations. The apparent reason for the arrest was that Mr. Bolaleh sent a letter of complaint to the "Minister of the Interior", who arrested the policeman responsible for torture whom Mr. Bolaleh's complaint concerned.

107. Another individual, who makes regular public weekly speeches on human rights related matters, has also been harassed. The independent expert was informed that since March 1997 Mr. Abdirashid Osman Jama has been making one-hour public addresses on human rights-related matters in a specific location at the same time every week. At first the authorities tolerated him. After eight months, they arrested him on charges of insulting the "Somaliland" administration. After 40 days he was brought to court, where he was released for lack of evidence. When he resumed his speeches, he was brought before the "Attorney-General" on charges of refusing to stop making his speeches. But he was released and had the impression that the "Attorney-General" approved of his activities. However, one year later he was arrested again, this time on charges of distributing leaflets criticizing the "President of Somaliland". Mr. Jama says that the leaflets were distributed during one of his speeches, but without his knowledge or approval. In court, he was notified that the "Government" wanted him to stop making his speeches.

G. Education

108. The "Assistant Minister of Education and Sports" told the independent expert that 20,000 students attend 24 government schools all over "Somaliland". The age for schooling is from 7 to 18. Co-education of girls and boys takes place until the age of 12. School attendance used to be compulsory. It is currently optional, owing to the lack of schools and material, including chairs and desks. UNICEF supports most of the schools. There are also private schools. Plans are under way to provide more updated and comprehensive educational materials, starting in 2000. The independent expert believes that this is an important opportunity for OHCHR and UNICEF to integrate human rights and civic education into the curriculum.

H. The situation of women and children

109. Human rights defenders reported to the independent expert that there are many cases of sexual abuse of women and children, particularly among the internally displaced population. The situation with regard to internal displacement is making the number of street children rise. Although most of these children are "Somalilanders", there are also other groups, including Ethiopians. An increase in the use of alcohol and hashish among children has also been cited.

110. There are currently several committees on the rights of the child with the specific task of raising awareness on child rights. UNICEF has advocated the creation of these committees and is assisting them.

I. Minorities

111. Despite the legal equality of all "Somalilanders" by virtue of their "Constitution", minorities are socially discriminated against, in particular the Tumaals, the Midgaans and the Hebrews. The independent expert was told that these are outcast communities that are only allowed to perform certain menial jobs and functions. They are not allowed to inter-marry with other clans.

112. While it is appreciated that the "Constitution" grants these minorities equal political rights, they seem to be unable to enjoy these rights because of their lack of resources. In her letter to Mr. Egal, the independent expert suggested that an affirmative action scheme is perhaps needed, so that the status of these minorities is raised within the community. Two recent cases of inter-marriage resulted in some communal violence and police intervention.

J. Allegations concerning toxic waste

113. An individual case relating to the adverse effects of toxic substances on health and the environment was brought to the attention of the independent expert. Mr. Mohamed Hassan Said and six other individuals have claimed that they are suffering serious health complications as a result of their exposure to toxic components of paint. Reportedly, Berbera Fuel Storage Tanks, managed by MEG-Total in Berbera hired Mr. Mohamed Hassan Said at the beginning of September 1999, together with six other individuals. After working for 14 days, all of them started experiencing respiratory problems and developed skin rashes on their fingers. On 24 September, they stopped working to undergo a medical check-up. The company refused to provide them with transportation, so they had to walk to the hospital, where they coincidentally came across the Director-General of the "Ministry of Health", who was briefed on the case and ordered that all concerned be hospitalized. Blood samples were apparently taken, which seem to have showed traces of toxic chemicals. A further more thorough medical check-up outside Berbera was recommended. Reportedly, the company, which is scheduled to leave the country in December 1999, refused to cover their medical expenses and suspended payment of their salaries. It eventually re-employed four of the above-mentioned individuals at higher salaries (US$ 13 a day instead of US$ 10). They were also reportedly offered reduced working hours, provided they stopped complaining. The other three, including Mr. Mohamed Hassan Said, refused the deal and continued their medical check-up in Hargeisa, where they approached the "Minister of Health", requesting that an official letter stating the facts to be produced in court in Berbera. The director of regional health sent a letter to the company and the labour services dated 25 September 1999, in which he denounced the unfavourable conditions of work experienced by the above-mentioned individuals. The letter was also published in the newspaper Maandeeq on 9 October 1999. No reply had been received by 18 November 1999, the date of the independent expert's visit to "Somaliland". In her letter to Mr. Egal of 26 November 1999, the independent expert suggested that further control was needed to ensure that such toxic material was not utilized or dumped in "Somaliland".

K. Mass graves

114. The independent expert reported to the Commission at its previous session on the preliminary assessment by a team of forensic experts sent by OHCHR of mass graves in the vicinity of Hargeisa, in north-west Somalia (E/CN.4/1999/103/Add.1). A "technical committee for the investigation of war crimes" was set up in Hargeisa. Its work continues to focus on the identification of the victims. The committee's main concern is to preserve evidence of mass graves, as well as the sites themselves. This is not an easy task since the land is increasingly being claimed by the internally displaced for resettlement. The municipality of Hargeisa has helped to protect some sites, but more work in this respect is needed, particularly in other areas. Representatives of the committee visit the sites to make further assessments, sometimes accompanied by doctors who have been trained by the two international forensic experts sent by OHCHR..

115. This effort is crucial, especially in the context of possible action by the international community to bring the perpetrators of the killings to justice. In this connection, the independent expert was informed that some of those suspected of committing these atrocities are living in the United States, the United Kingdom, Italy and Kenya.

VII. THE VISIT TO "PUNTLAND"

116. The independent expert visited "Puntland" on 21 and 22 November 1999. She landed in Garowe, the capital of "Puntland", and travelled for about six hours by road to the port town of Bosasso on the Gulf of Aden. This was the second time the independent expert had visited Bosasso. A previous visit took place from 9 to 12 November 1997, during the floods.

117. In contrast with "Somaliland", "Puntland" does not consider itself a separate entity. Rather, it describes itself as a regional government of Somalia. In her report to the previous session of the Commission on Human Rights (E/CN.4/1999/103), the independent expert reported on how "Puntland" came into being in 1998. The "Puntland" Constitutional Conference was held in Garowe, between 15 May and 30 July 1998. It was attended by 470 delegates from the Bari, Nugal, Sool and Sanaag regions, as well as hundreds of observers. None of the delegates were women. The conference ended by formulating a new "social contract" as a basis for the restoration of effective State authority in these regions.

118. During her visit, the independent expert met the "Vice-President" of "Puntland", the "Director of Foreign Affairs", the "Deputy Speaker of Parliament" and the "Chairperson of the Parliamentary Foreign Relations Committee", the "Minister of Justice", the "Head of the Supreme Court", and the "Director-General of the Ministry of Foreign Affairs". She visited the "Parliament" while it was in session and also visited the shariah courts in Garowe and Bosasso, the Bosasso central prison and the police academy in Bosasso.

119. The issues raised during the visit are described below. As was explained earlier, in the section on"Somaliland", for the stable regions, such as "Somaliland" and "Puntland", the independent expert will use as a standard the elements of democracy that were elaborated in Commission on Human Rights resolution 1999/57. These elements provide a useful indication of good governance. They are listed in paragraph 82 above.

A. The "Parliament"

120. The independent expert visited the "Parliament", while it was in session. She attended part of the presentation by the "Minister of Information" of his report to the "Parliament". The independent expert was later informed that the "Parliament" received basic training on parliamentary work by a Canadian parliamentarian brought to "Puntland" by Parliamentarians for Global Action.

121. The independent expert was informed that there are 66 members of "Parliament", including five women, each representing one of the five regions of "Puntland". The "Parliament" meets once every six months and each session may last for up to one month. Rules, regulations and laws are drafted by the "Government" and submitted to "Parliament" for discussion and approval. The "Government" also submits the budget, for debate and approval. Five members of "Parliament", including the "Chairman" and the "Vice-President", have legal training.

B. The laws

122. The independent expert was informed by the "President" of the "Supreme Court", who is a legally-qualified jurist, that the laws currently enforced in "Puntland" are based on the colonial Italian laws, as well as the laws which were enacted in Somalia after its independence. The judge informed the independent expert, however, that the "Puntland" administration prefers to apply Islamic law. It applies laws inherited from previous regimes where they do not contradict shariah law.

123. The independent expert was informed that the current "Puntland" "Parliament" has already passed a press law, which was prepared and presented by the "Minister of Information", and a foreign investment law, which was prepared and presented by the "Minister of Commerce". The "Attorney-General" is in charge of collecting all the laws passed by the "Parliament", printing them and making them available.

124. The "Puntland" charter, which serves as its Constitution, provides for separation of the three governmental powers: legislative, executive and judicial. It also bases "Puntland" on a market economy, as opposed to the socialist approach which characterized Siad Barre's era.

C. The judiciary

125. The "President" of the "Supreme Court" and the "Minister of Justice" informed the independent expert that there are currently three different levels of courts in "Puntland": primary, appeals and supreme. Also, there is a "Constitutional Court" and the "Attorney-General"'s chamber, which are part of the "Ministry of Justice". Primary courts can be found in all the major towns of Bosasso, Galcayo, Garowe, Lasa'not, and Baraan.

126. There are 44 judges, 13 clerks and 13 court registrars working in the court's administration, bringing the number of employees to 70. They are under the "Ministry of Justice". The judicial budget depends on government allocation and is currently about 62 million Somali shillings, which is around US$ 6,200 per year.

127. Many conflicts are resolved outside the courts, however, on the basis of Islamic law. The main problem here is the lack of written laws in Somali, particularly following the war, in which most of the material was looted or destroyed.

128. In Garowe, the independent expert visited the "Court of First Instance". Although the judge hardly spoke Arabic, he was using an ancient Arabic textbook as his basic legal document. The courtroom was full. The judge said that he had examined mainly personal status cases that day.

129. The independent expert also visited the "Court of Appeals" in Bosasso. The sign on the building read "The Islamic Court of Bosasso". The "Court of Appeal" was hearing a murder trial. The "Court of First Instance" convicted the appellant and his family appealed the decision. A lawyer was apparently defending the appellant. A policeman represented the "Attorney-General" of "Puntland".

130. The conditions in the two courts were very basic. The "Minister of Justice" and the judge stressed that they needed modern legal texts. They also said that they did not have a sufficient number of judges. There are also problems with regard to knowledge of international treaties, in particular international human rights law, as well as the law of the sea as Somali has long coasts and Bosasso is an active port.

D. Law enforcement

131. The "Director-General of Foreign Affairs" informed the independent expert upon her arrival in Garowe that among the main achievements of the "Puntland" administration in less that 18 months following its establishment was the decreasing level of crime. In most areas, the roadblocks that were set up by militias and bandits to collect money have virtually disappeared. Those who were responsible for these roadblocks have been arrested, tried and given prison sentences of up to 5 years. He also cited as an achievement the decrease in the number of persons carrying weapons.

132. While in Bosasso, the independent expert met the commander of the police force and visited the central prison. She had already visited this facility in 1997, when it was under construction and reported (E/CN.4/1998/96, para. 87) that the construction of this prison was supported by the United Nations Conference on Trade and Development and the European Commission.

133. During her visit in 1999, there were 120 inmates in the prison, including 7 women. The women were in one section, separate from the men. When the independent expert visited, they were being taught some basic Arabic and the Koran by two males. The teaching books were donated by Islamic organizations in Kuwait and Saudi Arabia. Five of the women were convicted and imprisoned for fighting among themselves, and the two others for smuggling. One of the women had a child with her, perhaps one year old. One of the female prisoners appeared to be a minor, about 15 years old. She was kept in the same area as the rest of the women. The independent expert was told that all the women had been sentenced by a court.

134. The men's section of the prison appeared crowded. According to the officials, their charges ranged from theft and smuggling, to murder. Those who had committed serious crimes, such as murder, are not separated from those who had committed petty crimes. Those who are convicted of murder are sentenced to death. The independent expert was told that seven executions by firing squad had already taken place in "Puntland" since it came into existence 18 months ago.

135. There were no separate facilities for juveniles. Young offenders were kept with other inmates, irrespective of their age. The independent expert saw a 16-year-old boy who was kept with adults.

136. The independent expert also visited the police-training academy, in very modest premises made of tree branches, near the sea, the training taking place in the open air. The facilities were extremely basic and lacked equipment of any kind, including proper accommodation: the beds were just straw mats on the floor; there was neither water nor electricity. Twenty-one policemen were being trained there. About half of them were in uniform. They belonged to the emergency police. Some members of this unit had already been sent to Galcayo to assist in a problem related to the theft of MSF-Holland medical and emergency relief supplies there, mentioned elsewhere in this report. The academy lacked all training materials and had no paper, although some of the policemen could read and write. The trainers were mainly using their pre-1991 experience to train the others.

E. Freedom of expression

137. There is a governmental press and an independent press in "Puntland". They are apparently close to the Muslim fundamentalists. There is less tolerance for freedom of expression in "Puntland". The independent expert was informed about several cases of journalists or researchers detained because they had published material that the administration did not agree with. One case involved a Canadian female researcher of Somali origin working with the United Nations Somalia War-torn Society Project, who was detained because of her published views on the compatibility of female genital mutilation with shariah.

138. Another case involved Mr. Bile Maxamuud Qabowsade, a journalist, who allegedly was arrested and beaten for reporting about a plane coming from Ethiopia. He apparently reported that it was carrying ammunition. The editor of the Sahan newspaper appears to have been imprisoned on two occasions for criticizing the Government.

F. Protection of human rights defenders

139. The OHCHR team accompanying the independent expert met two representatives of the non-governmental organization Human Rights Watch in "Puntland". They learnt about the independent expert's visit by accident and therefore did not come with documentation. However, they reported on the little tolerance the "Puntland" administration has for dissent.

G. Displacement

140. The independent expert in her report to the Commission in 1998 (E/CN.4/1998/96) reported about the situation of the internally displaced. She said that Bosasso hosted tens of thousands of internally displaced persons, who constituted about one third of the city's population. She reported that many internally displaced preferred that part of their family became refugees by crossing the Gulf of Aden by boat to Yemen in order to be eligible for refugee status and to be assisted by UNHCR, or that they continued to Saudi Arabia. The boat owners would often drop people close to the coast; some of them drowned.

141. The local administration is trying to control this phenomenon by arresting the boat people. The strong measures taken against them has discouraged the internally displaced from coming to Bosasso, because of the difficulties in crossing the Gulf of Aden. Therefore, their numbers have now decreased significantly.

142. In fact, there were even claims that some internally displaced were actively forced back to their area of origin, for instance Kismayo or Mogadishu, in spite of the conflict, on the grounds that they were illegal immigrants.

VIII. BUILDING A HUMAN RIGHTS NUCLEUS IN SOMALIA

143. The independent expert recommended in her 1998 report to the Commission on Human Rights (E/CN.4/1998/96) that OHCHR place a human rights officer for Somalia in Nairobi. The United Nations High Commissioner for Human Rights decided to appoint this officer in the framework of the Office of the United Nations Resident Humanitarian Coordinator for Somalia in Nairobi, Kenya, and the Commission on Human Rights welcomed this decision at its fifty-fifth session, in resolution 1999/75.

144. The independent expert is pleased that this officer was finally placed in Nairobi in October 1999, after significant bureaucratic difficulties were overcome. The human rights officer will pursue the following objectives: (a) monitoring the human rights situation in Somalia; (b) mainstreaming and integrating a human rights perspective into the work of all the United Nations agencies regarding Somalia; (c) providing technical assistance in the field of human rights; (d) supporting Somali human rights NGOs; (e) raising awareness in the area of the administration of justice; and (f) assisting the independent expert in fulfilling her mandate.

145. The independent expert was pleased with the efforts that the human rights officer has already made. Although he only started his work one month before the independent expert's visit, she found that he had already made two trips to Somalia, established useful contacts and started to prepare his work plan for the next year. The independent expert hopes that, with consolidated work in the field, the Commission on Human Rights and OHCHR will be able to give meaningful assistance to the people of Somalia in the area of human rights at this crucial period of their history.

146. As the independent expert has been asserting, there are several possibilities for building a nucleus for human rights work in Somalia. This work will not only advance peace and stability in the country, but will also pave the way for better respect of human rights. In her previous

report, the independent expert already identified four areas that could be addressed. They remain of vital concern. They are: (a) support for Somali human rights defenders; (b) integrating human rights into the work of the United Nations agencies; (c) raising awareness on women's rights; (d) raising human rights awareness in the area of law enforcement.

147. Work on issues relating to the administration of justice should take into account the elements of due process rights, elaborated elsewhere in this report, so that the international community avoids being accomplice to the commission of war crimes.

148. During the independent expert's visits to Somalia, several entities, ranging from regional administrations, the police, and non-governmental groups asked for assistance in the field of human rights. Their requests range from asking for documentation, such as factsheets and training manuals in the area of human rights, to evaluating laws and their compatibility with human rights standards, to training of law enforcement agencies and NGOs.

149. Several assistance programmes are already under way particularly in the northern areas. Currently, three United Nations agencies are providing technical cooperation in Somalia in the area of the administration of justice. There is also an assistance programme created by a Swedish NGO and supported by the Swedish Embassy in Nairobi.

150. The Somali Civil Protection Programme (SCPP) is an autonomous programme created by UNDP. When this programme was started in late 1997, it was intended to focus on demobilization of the militia; demining; community participation, including public information and human rights. In 1998, a consultant was hired to explore the possibility of integrating human rights into the work of SCPP. She identified some appropriate points of intervention, such as the judiciary, law enforcement mechanisms and parliaments. She also recommended the preparation of training manuals and the adoption of a participatory approach to human rights training. She further outlined a training programme for the judiciary and another project to assist parliamentarians in the creation of a legislative framework for the promotion and protection of human rights. She called for the establishment of independent government-supported human rights commissions and advocated the extension of support to the nascent human rights and civil society groups.

151. An evaluation of SCPP itself seems to have taken place, emphasizing that the main SCPP objectives of consolidating and reinforcing peace and enhancing economic and social recovery should be fulfilled through efforts involving law enforcement agencies, including the police, the custodial and correctional services and the judiciary. While this focus is welcome, the independent expert is concerned that a human rights dimension should be fully integrated in this work and the expertise of OHCHR fully utilized in this respect.

152. SCPP is now proposing a project with an estimated budget of $11 million in the areas of capacity building for the judiciary and legal reform, human rights, law enforcement, demobilization, drug abuse and mine action. This project will cover "Somaliland" and "Puntland", as well as Hiran, and Bay and Bakool in central and southern Somalia. The Government of Italy has apparently agreed to provide $3,600,000 to support SCPP for the year 2000; $4,002,000 for the year 2001 and $4,213,000 for the year 2002.

153. The independent expert is pleased to learn that, following a meeting with the OHCHR human rights officer, the SCPP team has agreed on full cooperation with OHCHR in the areas of the implementation of human rights, law enforcement and the judiciary aspects of SCPP projects.

154. Other projects are being implemented for the same regions by other United Nations bodies and NGOs. For instance, the United Nations Development Office for Somalia (UNDOS), an autonomous programme created by UNDP, has started to work on assistance to the judiciary in "Somaliland". A team composed of a "Somaliland" jurist and a United Nations Volunteer (UNV) prepared a report in November 1999 on this issue. The report, of which the independent expert has a draft copy, provides, inter alia, detailed recommendations on training of judges of different levels, as well as of the attorney-general's staff and of court registries; charges UNDOS with the task of creating a code of ethics for judges; and calls for the establishment of libraries for various courts. The report does not dwell on the content of the training and the materials to be used in it. Neither does it make reference to human rights in its recommendations. The report estimates a minimum budget of $110,000 for these proposed activities.

155. The independent expert was informed that, at a meeting with the OHCHR human rights officer, UNDOS directors stressed that they had been undertaking projects in the area of law enforcement and the judiciary because no one else was there to do so. At present, they were in a time of transition and reassessment. They welcomed close cooperation and constant consultation with OHCHR, however.

156. The Somali Rehabilitation Program (SRP) has a project for "Puntland" of three days duration and with a budget of $34,000. Its stated objective is to assist in the setting up of a judiciary in line with the "Puntland" transitional charter by advising the "Government" in general and the "Ministry of Justice and Religious Affairs" in particular. A three-day workshop is proposed for this purpose. It is suggested that it be attended by the "Minister of Justice and Religious Affairs", the "Chief Justice" and justices of the "Supreme Court", heads of "Appeals Courts", the "Attorney-General", members of the high judicial council and director-generals and directors of ministries, totalling a maximum of 20 participants. It seems that this project has been put on hold.

157. A fourth project in the same area is proposed by Diakonia, a Swedish NGO supported by the Swedish Embassy in Nairobi. The project focuses exclusively on "Puntland" and covers the following major areas: legal support; education; governance; and law enforcement. In the legal support section, the project calls for a team of consultants comprising a legal consultant and two members of the judiciary to be retained to assess all legal codes and practice and present its findings to a seminar in which various governmental departments and NGOs are represented. The findings would thereafter be distributed to all the courts. The team would consist of one scholar from Egypt's Alazhar Islamic University, one member of the "Puntland" judiciary and a representative of Diakonia, Sweden as a coordinator. The programme would include organizing compulsory training programmes for all judges, with particular focus on basic legal studies and the current legal framework in "Puntland". It would harmonize the codified law, shariah law and human rights law. It would also provide an assessment of the challenges and obstacles. The project aims to place a foreign expert within "Puntland's" "Constitutional Commission" to help in the drafting of the constitution and the incorporation of human rights in that draft.

158. Additionally, the governance part of this project calls for the creation of a team headed by a Swedish police consultant with two members of the "Puntland" police force, to undertake an assessment of the training needs of the police. The training would focus on legal training, with emphasis on human rights, basic policing, treatment of offenders and community-based solutions.

159. The project document does not elaborate on the content of the human rights training to be undertaken or the pedagogic methods it is intended to use. There is also no reference in the project to OHCHR, or its training manuals or to the issue of cooperation with other partners.

160. The various projects mentioned above highlight the need for enhanced coordination with regard to human rights assistance programmes for Somalia. A working strategy should be developed so that structured programmes within a coordinated framework, not piecemeal activities, are carried out. Enhanced coordination will lead to more rational use of the scarce technical cooperation resources available to Somalia.

161. Despite the difficult situation in Somalia, the independent expert is pleased that several international donors have maintained their sustained support for Somalia. The main challenge for any technical assistance programme is to have some lasting impact. The delicate and complex situation in Somalia necessitates that the sustainability of any proposed project should always be kept in mind. Duplicative and substandard activities do not help in this regard.

162. In this connection, the appointment of an OHCHR officer with significant human rights expertise should fill a major gap in the system. In her previous report to the Commission on Human Rights (E/CN.4/1999/103) the independent expert had already foreseen that the OHCHR officer should serve as a focal point for discussions on human rights assistance to Somalia within the United Nations agencies and beyond. This fits well within the mandate of the United Nations High Commissioner for Human Rights conferred upon her by the Secretary-General in his report "Renewing the United Nations: a programme for reform" (A/51/950). In this report, the Secretary-General designated the High Commissioner for Human Rights as focal point to assess all United Nations technical assistance activities in this field.

IX. CONCLUSIONS AND RECOMMENDATIONS

163. Despite the serious human rights and humanitarian crisis many Somalis have to endure on a daily basis, civilians, in particular women, children and intellectuals, aspire to live in a peaceful and stable Somalia ruled on the basis of dignity and respect. The independent expert particularly appreciates the deep sense of pride that the Somali people share and the welcoming attitude and warmth she is met with in Somalia.

164. During 1999, about half of Somalia has been living in peace. The power of the war-lords has declined. The initiative of President Ismail Omar Guelleh of Djibouti as announced by his speech in September 1999 to the General Assembly has raised hope within Somalia and beyond. His emphasis on the role of civil society and not the war-lords has met with the approval of the majority of Somalis. The independent expert welcomes his proposal for the possible trial of those suspected of war crimes and crimes against humanity. She would like to stress in this regard that peace and justice should go hand in hand and not be alternatives to each other.

165. Meanwhile, the independent expert is concerned about the serious human rights crisis in central and southern Somalia, particularly in Mogadishu and Kismayo. She is concerned about the fate of civilians who are suffering serious violence against their life and property, looting, rape and other forms of sexual violence, and persecution. She is particularly alarmed by the conscription of child soldiers, and the fate of the internally displaced. Much of what is happening in these areas amounts to war crimes and crimes against humanity.

166. In this respect, she reminds States that the Security Council has already imposed an arms embargo on Somalia and calls on them to respect this embargo. The continued supplying of arms to the various factions still fighting in Somalia impedes humanitarian aid, prolongs the conflict, puts the lives of civilians in jeopardy and undermines security and the confidence required for a return to peace and stability.

167. The independent expert particularly welcomes the enhanced peace and stability that the two northern regions in Somalia enjoy, and calls upon other regions to follow suit.

168. Despite the difficult situation in Somalia, the independent expert welcomes the fact that several international donors within the international community have maintained their sustained support for Somalia, not only for humanitarian relief, but also for encouraging governance and reconstruction. The main challenge in all technical assistance programmes is their sustainability. The delicate and complex situation in the country as described in the present report necessitates that the issue of sustainability be particularly kept in mind. Duplicative and substandard activities do not help in this regard.

169. The independent expert welcomes the placement by OHCHR of a human rights officer for Somalia in Nairobi. She believes that working close to Somalia in a sustained manner will pave the way for more meaningful work on Somalia by the Commission on Human Rights and OHCHR. She calls upon the various United Nations agencies operating in Somalia to facilitate the task of this officer and calls upon the donor community to support this important endeavour.

Notes

[1] See Code of Conduct for International Rehabilitation and Development Assistance to Somalia of 8 February 1995 and the Clarification of the Code of Conduct for International Rehabilitation and Development Assistance to Somalia, July 1995, available at the Documentation Unit of the United Nations Development Office for Somalia (UNDOS), Nairobi.

[2] See Report of the Secretary-General on the Situation in Somalia to the Security Council (S/1999/882), para. 67.

[3] Ibid., para. 70.

[4] Ibid., para. 45.

[5] The United Nations country team for Somalia weekly security update, 19-26 November 1999.

[6] Ibid.

[7] Ibid.

[8] Interview with the United Nations Somalia Chief Security Advisor on 15 November 1999.

[9] The United Nations country team for Somalia weekly security update, 19-26 November 1999.

[10] See document A/54/PV.9.

[11] Ibid.

[12] The United Nations country team for Somalia weekly security update, 19-26 November 1999.

[13] A draft proposal is being elaborated by the office of the United Nations Resident Coordinator for Somalia concerning the protection of aid workers in conflict zones.

[14] "Independent expert on Somalia expresses concern over proposed European Union policy on Somali refugees", United Nations press release HR/99/96, 12 October 1999.

[15] This Commission was created by virtue of the Final Act of the Rome Diplomatic Conference of Plenipotentiaries for the Establishment of an International Criminal Court, which was adopted on 17 July 1998.

[16] This list is based on the discussions around the proposal on article 8, paragraph 2 (c) of the Rome Statute of the International Criminal Court submitted by Costa Rica, Hungary, and Switzerland to the Working Group on Elements of Crimes of the Preparatory Commission for the International Criminal Court, 19 July 1999 (PCNICC/1999/WGE/DP.10).

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ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS

Situation of human rights in Somalia

Report of the independent expert, Ms. Mona Rishmawi, submitted in accordance with Commission on Human Rights resolution 1999/75

CONTENTS

Corrigendum

Cover page, title of the report

Special Rapporteur should read independent expert

Executive summary, sixth paragraph

Before the last sentence, insert In this context the independent expert stresses that peace and justice should go hand in hand and not be alternatives to each other

Executive summary, thirteenth paragraph

At the beginning of the paragraph insert With respect to building a human rights nucleus in Somalia, the independent expert is pleased that the OHCHR human rights officer for Somalia was finally placed in Nairobi in October 1999, after significant bureaucratic hurdles and been overcome.

GE.00-13142 (E)

Executive summary, last paragraph, second sentence,

Paragraph 169, second sentence

Replace working close to Somalia, and in a sustained manner by working in the region on Somalia, in a sustained manner, and regularly visiting the country

Paragraph 25

After chaired by insert Mr. David Stephen,

Paragraph 75

Before raped and shot insert allegedly

Before lost so much blood insert apparently

Paragraph 11, footnote No. 2

para. 67 should read para. 70

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Fifty-sixth session
Item 19 of the provisional agenda

ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS

Situation of human rights in Haiti

Note by the secretariat

1. In resolution 1999/77, entitled "Situation of human rights in Haiti", the Commission on Human Rights, inter alia, invited its independent expert, Mr. Adama Dieng, to report to the General Assembly at its fifty-fourth session and to the Commission on Human Rights at its fifty-sixth session on developments in the human rights situation in Haiti.

2. In accordance with that resolution the independent expert visited Haiti from 11 to 20 March 1999 and submitted a report to the General Assembly at its fifty-fourth session (A/54/366). That report is being made available as a reference document to the Commission at its present session.

3. The independent expert intends to carry out a visit to Haiti during the first trimester of 2000. Owing to the late date of that visit, combined with the exigencies of the conference services, the independent expert will not be in a position to present a full report to the Commission at its present session. The independent expert will, however, report to the Commission orally on his visit to Haiti.

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COMMISSION ON HUMAN RIGHTS
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RATIONALIZATION OF THE WORK OF THE COMMISSION

Report of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights

GE.00-11072 (E)

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Introduction

1. The Working Group met for a total of 15 days (28 September - 1 October 1999, 6-10 December 1999, 18-19 January 2000, 7-11 February 2000). The purpose of the Group, as made clear in its title, was to enhance the effectiveness of the mechanisms of the Commission on Human Rights. The basis for its work was the statement by the Chairperson of the fifty-fifth session of the Commission approved by consensus by the Commission on 29 April 1999. The present report to the Commission was adopted by the Working Group on the basis of consensus, in accordance with the approach outlined in the Chairperson's statement.

2. The Working Group had before it the report of the Bureau of the fifty-fourth session of the Commission (E/CN.4/1999/104) and a range of other inputs. The documents tabled during the Working Group meetings are listed in the annex.

3. The Working Group expresses its appreciation to the representative of the Sub-Commission on the Promotion and Protection of Human Rights and to the representatives of the special rapporteurs, special representatives and independent experts for their participation in the relevant parts of the discussion.

CHAPTER ONE

General approach

4. The Working Group wishes to outline some features which characterized its deliberations.

(i) **A coherent approach**. In keeping with its mandate, the Working Group sought to proceed in a manner which was focused and result-oriented, while at the same time maintaining the necessary coherence and comprehensiveness. It gave particular attention to the specific areas identified in the Chairperson's statement of 29 April and this report contains a series of recommendations in these areas. The Working Group, however, was conscious throughout that the United Nations machinery for protecting and promoting human rights is extensive and complex and that none of the component parts functions in isolation from each other. It therefore situates its report in this wider context.

(ii) **Conceptual consistency**. The Group also sought to ensure that its recommendations to the Commission would be underpinned with a conceptual consistency.

- In addition to recommendations on specific mandates, it proposes some general criteria which would help to guide decision-making on the rationalization of current and the establishment of future mandates.

- In a variety of instances (elections to the Sub-Commission; continuance both of special procedures working groups and Sub-Commission working groups rather than replacement by special rapporteurs), it has favoured the maintenance of approaches which were felt to be more democratic and representative than the proposed alternatives.

- It also has sought to adopt a consistent approach in seeking to balance the benefits of **continuity** with the benefits of **renewal:** following the decision of the Commission at its fifty-fifth session to introduce time limits for Special Rapporteurs, the Working Group recommends time limits for membership of special procedures working groups.

(iii) **Balance**. The balance to be struck between civil and political rights and economic, social and cultural rights was a recurring theme in the Group's work. The Group was agreed that, while a mathematical approach was inappropriate, it was reasonable to expect that the accepted equal importance of both sets of rights should find a broad reflection in the United Nations human rights machinery. This underlying consideration conditions a number of the comments and recommendations made in the report.

The Commission's network of special procedures

5. The Group agreed that the network of thematic special procedures is in need of rationalization and strengthening and that this requires a multi-pronged approach. Its recommendations on rationalization are contained in paragraphs 12 to 22 below. Other issues of relevance considered by the Group include selection of the mandate holders, quality of support to the mandates from the Office of the High Commissioner for Human Rights and coherence in the work of the Rapporteurs. Its **recommendations** in these areas are set out in the following paragraphs.

Selection of mandate holders

6. To assist in the selection of the most suitable individuals to hold mandates, a list of possible candidates should be maintained by the Office of the High Commissioner for Human Rights. The list should comprise the names and curricula vitae of highly qualified individuals who would be suitable and willing to serve as rapporteurs in particular areas. The list should be constantly updated and every effort made to ensure that it is representative of different geographical areas and different legal systems, as well as having a gender balance. To ensure as extensive a list as possible, contributions should be encouraged from States and from all appropriate sources including non-governmental organizations in consultative status with the Economic and Social Council; the Secretariat is also encouraged to contribute names of suitable persons. The list should be posted on the Web site of the Office of the High Commissioner for Human Rights (OHCHR), as well as being available at the Office.

7. Selection of mandate holders will continue to be the responsibility of the Chairperson following formal consultation with the Bureau and the regional groups through the regional coordinators. In appointing mandate holders, the professional and personal qualities of the individual - expertise and experience in the area of the mandate, integrity, independence and impartiality - will be of paramount importance. Due regard should also be had to an overall geographical and gender balance among the mandate holders, as well as to ensuring familiarity with different legal systems. The Chairpersons would give priority consideration to suitable names on the list; however, this should not exclude - exceptionally, if the requirements of a

particular post justify it - consideration of additional nominations put forward for a specific vacancy. An individual should not hold more than one mandate at a given time.

Support to mandate holders

8. It is acknowledged that the level of support available to the mechanisms is not commensurate with their activities and the importance of their responsibilities. The Working Group considers the financial situation of OHCHR needs to be significantly improved through increased contributions from the United Nations regular budget, so as to ensure collective responsibility and an adequate allocation of resources to all mandates. In this respect, it reaffirms that the procedure set out in General Assembly resolution 41/213 regarding the financing of mandated activities and programmes should be applied. The Working Group notes that improved provision from the regular budget can be importantly supplemented by increased voluntary funding.

9. The Group also underlines the importance of a balanced allocation of resources at OHCHR, consistent with the High Commissioner's emphasis on the equal priority to be accorded to civil and political rights and economic, social and cultural rights. It notes the High Commissioner's call for voluntary contributions to be unearmarked as far as possible so as to offer improved flexibility in resource allocation within the Office. It welcomes and encourages regular briefings by the Office on resource availability and allocation.

Coherence in the work of rapporteurs

10. The Working Group underlines the independence and individual responsibility of each mandate holder. However, some organizaitonal aspects of their work will continue to benefit from collective consideration at the annual meeting of special rapporteurs and other special procedures. The Group encourages the mandate holders to develop fully the potential of this forum.

11. The Working Group notes the work currently under way in the General Assembly concerning a possible code of conduct for experts on mission and United Nations officials other than Secretariat staff. The Group encourages the special rapporteurs to continue to follow this exercise closely and requests that they report, through the Chairperson of their annual meeting, to the Commission at its fifty-seventh session.

Rationalization of mandates: general critera

12. The Working Group was conscious of the competing considerations involved in approaching the question of rationalization of mandates. The Commission clearly must be responsive to human rights imperatives; where human rights violations exist, mechanisms focus attention and have the potential to bring about important improvement. At the same time, the increasing number of mandates can create difficulties in terms of overlap and inadequate support services, as well as straining the capacity of States to absorb the output.

13. The Working Group considered that certain general criteria should guide decision-making on rationalization of mandates. It sees these general criteria as providing useful

points of reference rather than being applied with automaticity; the criteria also need to be considered in relation to one another rather than in isolation. It **recommends** that the criteria to apply at times of creating, merging or terminating mandates would include:

(i) Mandates should always offer a clear prospect of an increased level of human rights protection and promotion;

(ii) The balance of thematic mandates should broadly reflect the accepted equal importance of civil and political rights and economic, social and cultural rights;

(iii) Every effort should be made to avoid unnecessary duplication;

(iv) In creating or reviewing mandates, efforts should be made to identify whether the structure of the mechanism (expert, rapporteur or working group) is the most effective in terms of increasing human rights protection;

(v) Any consideration of merging mandates should have regard to the content and predominant functions of each mandate, as well as to the workload of individual mandate holders.

The Group is agreed that an objective and thorough review of all mandates should be conducted periodically by the Commission. A key question in the review should be the continued need for a mandate in terms of continued human rights violations in the thematic area concerned or continued situations of human rights violations in the country concerned.

Rationalization of existing mandates

Recommendations on specific proposals in the report of the Bureau of the fifty-fourth session of the Commission

(i) Merge the mandate of the independent expert on structural adjustment and the Special Rapporteur on foreign debt ;

14. The Working Group noted the fact that the independent expert on structural adjustment and the Special Rapporteur on foreign debt had worked very closely together and had submitted a joint report to the Commission at its fifty-sixth session. The synergies between the mandates are considerable and there are good grounds to believe that a merger would strengthen the coverage of the range of issues involved. Accordingly, and taking account of the resignation of the Special Rapporteur on foreign debt, the Working Group **recommends** that the independent expert be given both mandates and retitled the independent expert on structural adjustment and foreign debt.

(ii) Convert the mandate of the Special Rapporteur on the adverse effects of the illicit movement of toxic waste into that of special rapporteur on human rights and the environment;

15. The Working Group noted the proposal to convert the mandate of the Special Rapporteur on toxic waste into that of Special Rapporteur on human rights and the environment. This mandate was created in 1995, renewed in 1998 and is due for further renewal in 2001. The

Working Group **recommends** that the Commission be prepared to consider a broadening of the mandate at that time. The subject matter of an extended mandate would, however, need to be more precisely defined than "human rights and the environment".

(iii) Transform the Working Group on Arbitrary Detention into a special rapporteur on arbitrary detention;

Transform the Working Group on Enforced and Involuntary Disappearances into a special rapporteur on disappearances;

16. The Working Group considers that there is benefit in having these issues dealt with by working groups (each comprising five experts from different regions) rather than by individual rapporteurs. It therefore **recommends** that the Working Groups continue.

17. The Group is conscious of the expertise, dedication and worthwhile contribution made by the members of the two groups. It considers, however, that turnover in membership of these groups is important for ensuring renewal and enabling over time a wide variety of experts to make their contributions.

18. It notes that the Working Group on Enforced and Involuntary Disappearances was created in 1980. Three of the five members have served continuously since that date, the two others joining in 1988 and 1993 respectively. The Working Group on Arbitrary Detention was created in 1991 and all five members have served since that date.

19. The Working Group **recommends** that the same time limits - two terms of three years - should apply for membership of special procedures working groups as for rapporteurs.

20. It recognizes that in order to provide continuity transitional measures will be necessary in the case of the two working groups. It **recommends** that the turnover in both groups should be accomplished in incremental steps over a three-year transition period. A replacement of two members in year one, two in year two and one in year three would provide for continuity during the transitional period.

(iv) Terminate the mandate of the Special Rapporteur on the use of mercenaries and recommend that this matter henceforth be considered directly in the General Assembly (Sixth Committee).

21. The Group is not in a position to make a recommendation on this issue. It notes that the mandate is due for renewal in 2001 and recommends that all options - continuation, adjustment, termination - be further examined to enable a considered decision to be taken at that time.

(v) Terminate the mandate of the Sub-Commission's Working Group on Contemporary Forms of Slavery and transfer those responsibilities which are not addressed by existing mechanisms to a new special rapporteur on contemporary forms of slavery.

22. The Group **recommends** the retention of this Working Group; however, it also recommends that steps be taken immediately to make the Working Group more focused and

more effective. The agenda should be streamlined to remove duplication with items dealt with by rapporteurs. Taking account of a more focused agenda, meetings of the Working Group should be reduced to five days from the present eight days. Steps should also be taken to encourage wider attendance and wider circulation of reports.

CHAPTER TWO

How to support the mechanisms in responding urgently and effectively when allegations or concerns of serious human rights violations, requiring immediate clarification and/or relief measures, are brought to their attention

How to make consideration of reports of the special mechanisms at the Commission sessions more meaningful

How to ensure that, between annual sessions of the Commission, there is effective ongoing follow-up on the recommendations of special procedures and related conclusions of the Commission at its previous session

23. The Working Group decided, because of the relationship between the above three issues, to convey its recommendations in a single chapter.

24. The Working Group is agreed that the special mechanisms are crucial to the functioning of the Commission on Human Rights. It is therefore essential that they are properly supported, that they work effectively and that appropriate weight is given to their recommendations.

25. The Working Group noted that a majority of Governments extend cooperation to the mechanisms in all activities necessary to the fulfilment of their mandates. Refusal of cooperation occurs only in a minority of cases. These refusals, however, must be a cause of serious concern. In such cases, steps to encourage a more cooperative response are critically important and should be carefully considered by the Commission. A clear statement by the Government concerned of its reasons for lack of cooperation will facilitate efforts to overcome the problem.

Urgent responses

26. The Working Group considers that the human rights machinery of the United Nations is particularly tested at a time when there are allegations of an urgent situation of serious human rights violations requiring immediate attention in any part of the world. It notes that a special session of the Commission on Human Rights, convened in accordance with the relevant rules of procedure, is one possible response. Separate from intergovernmental responses, one or more of the thematic or country-specific rapporteurs concerned may request an immediate visit. Such requests, precisely because they arise in such difficult circumstances, should always be approached with great seriousness by the rapporteurs and equally treated with great seriousness by the Governments concerned.

27. A very large number of urgent appeals is issued each year by thematic and country-specific rapporteurs. The purpose of these appeals is to strengthen human rights

protection in situations giving rise to immediate concern. The Working Group underlines that the quality and credibility of the urgent appeal process is crucial to its effectiveness and notes the steps planned by OHCHR in this regard. It emphasizes that Rapporteurs should coordinate closely with the Office to ensure that (i) facts providing the basis for the urgent appeal are clearly set out (ii) there is exchange of information to ensure that rapporteurs do not issue parallel appeals without full knowledge of any other appeal being made to the Government concerned.

28. For their part, Governments to which urgent appeals are addressed should understand the gravity of the concern that underlies these appeals and should respond as quickly as possible. The Working Group **recommends** that the special procedures should be supported in instances where difficulty is being experienced in securing governmental responses to urgent appeals. It encourages the High Commissioner for Human Rights to continue in these instances to assist in seeking to promote the establishment of fruitful dialogue and cooperation between the Government and the special procedure concerned.

How to make consideration of reports of the special mechanisms at the Commission sessions more meaningful

29. The Working Group considers that the level of attention which the reports of the special mechanisms currently receive at Commission sessions is inadequate. The steps decided on at the fifty-fifth session of the Commission in relation to documentation (including executive summaries of reports and advance availability of unedited reports) should help delegations to better prepare for the discussion at Commission sessions.

30. The Working Group considers that some further steps can help to improve the quality of dialogue on the rapporteurs' reports at the Commission sessions. A more meaningful discussion is likely if Governments which have received visits from rapporteurs are in a position to comment in detail on the reports and if the debate at the Commission has a more interactive character than at present. It therefore **recommends** as follows:

(i) There should be a consistent practice among country-specific rapporteurs and thematic rapporteurs who are including country-specific sections in their report, of making the texts of their reports available to the representatives of countries visited sufficiently in advance to allow a reasonable opportunity for comment. Comments by the Governments concerned should be made available as an official document, either as an annex to the report or, if this is not feasible for practical reasons, as a separate document to be circulated at the same time as the report.

The definition of a "reasonable opportunity" to comment needs to be approached in a spirit of mutual understanding. Rapporteurs should understand that preparation of comments by Governments can often require inter-departmental consultation and therefore be time consuming. Governments for their part should understand that rapporteurs are often working to tight deadlines with limited support. A "reasonable opportunity" should normally be interpreted as a minimum of six weeks (with reports being made available, in unedited form if necessary, if possible in the relevant official language) , if such an interval has not been possible, there should be a good reason, which the rapporteur should explain at the Commission.

(ii) The Working Group considers that there would be important benefits in having more interactive debate on the reports of rapporteurs. It recommends that time be made available for such debate in the course of the Commission session, immediately following presentation of the report by the mandate holder.

Discussion of follow-up of current and past recommendations and consideration of situations involving failure or denial by Governments

31. The Working Group agrees that cooperation between the Governments and the rapporteurs should be seen as a process; for the rapporteurs and for the Commission itself, knowledge about the extent of follow-up of earlier recommendations is essential to considering how the process is to be developed. The Working Group discussed how a clearer picture might emerge in this regard.

32. The Working Group considers that steps agreed at the fifty-fifth session of the Commission and recommendations contained elsewhere in the present report would lead to a stronger sense of where progress has been made and where problems persist. The executive summaries of reports should help to focus discussion. Rapporteurs should structure their executive summaries so that salient points are identified; comments (positive or negative) on follow-up and comments about the degree of cooperation by Governments are likely to be among the issues to which attention is directed. If there is standard formatting of executive summaries, a section on follow-up is likely to become part of the standard format. In addition, with more systematic and interactive dialogue at Commission sessions, consideration of follow-up or failures will inevitably receive attention as part of that dialogue.

How to ensure that, between annual sessions of the Commission, there is effective ongoing attention to the recommendations of the special procedures and related conclusions of the Commission at its previous session

33. The cycle of meetings (the Commission session in spring; the United Nations General Assembly in autumn) is such that the Third Committee of the General Assembly is well placed to consider developments in the interim since the Commission session. Given the significant overlap both in agenda and in attendance between the Commission and the Third Committee, the Working Group considers that there is scope for a more dynamic sense of connection between the two. In particular, the Group recognizes the rationale for some form of enhanced preparation in Geneva so as to ensure that all delegations have relevant information available to them in their preparations for the Third Committee.

34. The Working Group therefore **recommends** that the Chairperson of the Commission should convene a one-day informal meeting of the Commission in late September each year specifically to facilitate exchange of information in advance of the General Assembly. The meeting, which would not have a formal outcome, would have an agenda comprising those issues which had been dealt with at the previous Commission session and which were also on the provisional agenda for the Third Committee. Each item would be focused on briefly, with information from the Secretariat on any developments since the Commission session, and an opportunity for comment by government representatives, including any indication of intentions for tabling resolutions in the Third Committee.

CHAPTER THREE

1503 procedure

35. The Working Group is convinced of the value of the 1503 procedure as a channel for individuals and groups to bring their concerns about alleged human rights violations directly to attention. It considers that the objectivity, impartiality and confidentiality of the process must be maintained in any reform. It believes, however, that the system can be made considerably more efficient without sacrifice of these essential characteristics. It submits recommendations both on the phase preceding the Commission deliberations and the deliberations at the Commission itself.

Phase preceding Commission deliberations

36. The Working Group **recommends** that the present three stages preceding the Commission deliberations should become two stages. It believes that this would continue to provide the careful filtering necessary, but would reduce the overly long delays in the present process. The two stages would comprise (i) the Working Group on Communications and (ii) the Working Group on Situations.

37. The **Working Group on Communications** (WGC) would comprise five independent experts, members of the Sub-Commission on the Protection and Promotion of Human Rights, geographically representative of the five regional groups. All members of the Sub-Commission would be eligible for membership, with an appropriate rotation of membership encouraged.

38. The WGC would meet annually immediately following the Sub-Commission, examine the communication received and any government responses, and prepare its report, including recommendations as to which situations should be referred to the Working Group on Situations.

39. To assist the efficiency of the process, the secretariat would screen out manifestly unfounded communications with the approval of the WGC Chair; monthly confidential summaries would be sent to all WGC members through secure means.

40. The **Working Group on Situations** (WGS) would comprise, as at present, five members nominated by the regional groups, with due attention being paid to rotation in membership. The WGS would meet at least one month prior to the Commission, so as to enable the secretariat to make confidential papers available at least one week in advance of the session. The Working Group on Situations would examine the report of the Working Group on Communications, determine whether or not to refer a situation before it to the Commission, and prepare a report identifying the main issues of concern. In referring a situation to the Commission, the WGS should normally present a draft resolution or decision on the situation.

Proceedings at the Commission

41. The Working Group considers that the consideration of 1503 situations at the Commission should be made more meaningful. It **recommends** two closed sessions to consider the recommendations of the Working Group on Situations.

At the first session, each country concerned would be invited to make opening presentations. A discussion would then follow between members of the Commission and the country concerned, based on the contents of confidential files and the report of the WGS.

In the interim between the first and second sessions, any member or members of the Commission could submit an alternative or an amendment to any texts forwarded by the WGS. Any such draft texts would be circulated confidentially by the Secretariat in accordance with the rules of procedure in advance of the second meeting.

At the second session, members of the Commission would discuss and take action on the draft resolutions or decisions. The Chairperson of the Commission would subsequently announce in public session which countries had been examined under the 1503 procedure, as well as the names of countries no longer being dealt with under the procedure. The 1503 dossiers would remain confidential, except where the Government concerned had indicated a wish that they become public.

CHAPTER FOUR

Sub-Commission on the Promotion and Protection of Human Rights

42. The Working Group recognizes that the Sub-Commission has made an extremely valuable contribution to the human rights work of the United Nations over the past 53 years. As a body of independent experts, its analysis and perspectives add an important dimension to the work of the Commission. The Working Group considers, however, that there is need for clarification and adjustment of the mandate of the Sub-Commission.

43. The concern to safeguard the independence of the Sub-Commission was a predominant theme in the discussions of the Working Group . The Group emphasizes that the independence of the membership is a defining characteristic of the Sub-Commission; to the extent that there is any perception that its independence is eroded, the credibility of the Sub-Commission and hence the influence that it can bring to bear on human rights issues is weakened.

Membership issues

(i) Election of members

44. The Working Group **recommends** that the Sub-Commission members continue to be elected according to the procedures currently in place. It considers that election of the membership is more transparent and democratic than appointment.

(ii) Safeguarding independence

45. Because of the complexities of the issue, the Working Group stops short of defining the categories of employment which would exclude candidates from eligibility for election to membership of the Sub-Commission. However, it emphasizes that persons putting their candidacies forward for membership, and Governments in electing the membership, should be conscious of the strong concern to ensure that the body is independent and is seen to be so.

46. Members of the Sub-Commission should maintain the highest integrity and impartiality and avoid acts which would affect confidence in their independence.

(iii) Duration of membership

47. In paragraph 4 above, the Working Group emphasizes the need for a balanced accommodation of the benefits of continuity and the importance of renewal. As with the principle of independence discussed above, the Working Group emphasizes that this should be borne in mind by persons putting their candidacies forward for membership and by Governments in electing the membership.

(iv) Size of membership

48. The Working Group considered the question of the optimum size of the Sub-Commission. To ensure effectiveness, numbers should be kept to the minimum necessary. However, the Sub-Commission should have sufficient numbers to ensure it is both geographically representative and representative of different legal systems; there must also be a sufficient pool of experts to staff the working groups of the Sub-Commission. Having weighed the various considerations, the Working Group recommends that the Sub-Commission remain at its present size of 26 members.

Mandate

(i) Oversight by the Commission

49. The Working Group considered that the role of the Commission in its oversight and determination of priorities of the Sub-Commission should be strengthened. In assigning projects, the Commission should ensure that it gives clear direction to the Sub-Commission, taking care to avoid duplication with work being carried out by other competent bodies and mechanisms. The Commission, at its fifty-sixth session, should undertake an initial review of the tasks currently being performed by the Sub-Commission; thorough reviews should subsequently be carried out by the Commission periodically.

50. The principal attention of the Sub-Commission should be given to the elaboration of studies and research and to providing expert advice at the request of the Commission. The Commission, in considering the assignment of work, should take into account relevant proposals from the Sub-Commission. The Sub-Commission should retain some right of initiative in carrying out research and studies. However, such work at its own initiative should comprise a modest percentage of the Sub-Commission's work and should also take full account of the need to avoid duplication with work being undertaken by other competent bodies.

(ii) Country situations/thematic resolutions with a country focus

51. The Working Group also discussed the question of consideration of country situations by the Sub-Commission. It is conscious that resolutions on country situations risk duplication with the work of the Commission and creating a perception of politicization of independent experts. At the same time, it accepts that there could be a loss in human rights terms if the Sub-Commission were unable to give any consideration to specific country situations.

52. The Working Group therefore **recommends** that the Sub-Commission should continue to be able to debate country situations not being dealt with in the Commission. It should also be allowed to discuss urgent matters involving serious violations of human rights in any country. However, the Sub-Commission should not adopt country-specific resolutions; its discussions would be reflected in the summary records of the debate, which should continue to be forwarded to the Commission.

53. The Working Group is conscious of the important range of issues which have been the subject of thematic resolutions adopted by the Sub-Commission. However, consistent with the independent expert character of the Sub-Commission as a think-tank, the Working Group recommends that it refrain from negotiating and adopting thematic resolutions which contain references to specific countries.

(iii) Standard setting

54. The Working Group envisages a potential role for the Sub-Commission in standard setting, as set out in paragraph 58 below.

(iv) 1503 procedure

55. As is clear from the recommendations in Chapter Three of this report, the Working Group recommends that the Sub-Commission as a whole cease to have a role in the 1503 procedure.

Duration of annual session

56. Taking account inter alia of the changes in the mandate of the Sub-Commission, the Working Group **recommends** that the annual session of the Sub-Commission should be of three weeks' duration.

CHAPTER FIVE

Standard setting

57. The Working Group considers that standard-setting will continue to be one of the central functions of the Commission on Human Rights. It **recommends** that the sequence of steps involved in formulating and adopting new standards should be as follows.

(i) Advance preparation

58. Before referring any matter to a working group the Commission should, where the necessary groundwork has not otherwise been undertaken, consider requesting the Sub-Commission to undertake a study on the question at hand and to prepare a draft text which should include a comprehensive analysis, with substantive comments, of the instrument envisaged. Among the issues to be addressed in any such study, and in the Commission's deliberations on whether to proceed, careful consideration should be given to the purposes of any drafting exercise and to the guidelines set out in General Assembly resolution 41/120.

(ii) Conduct of working groups

59. With the authorization of the working group concerned, all chairpersons should have standing authority to have informal contacts and consultations between meetings with a view to advancing progress in respect of the working group's mandate. If the working group considers it appropriate, and in consultation with OHCHR, chairpersons should be provided with the necessary financial resources to undertake these tasks. Chairpersons receiving such assistance should strive to conduct the informal consultations in the most cost-effective manner. Delegations should be kept informed of the progress of these consultations, including a briefing at the start of each session of the working group.

(iii) Time limits for standard setting

60. In creating any standard-setting working group, the Commission should consider a specific time-frame within which the group would be called upon to complete its task. This could vary, depending on the complexity of the issue and the nature of the instrument. However, in most instances, the established time-frame should not in principle exceed five years. If, by the end of this time-frame, the working group has not been able to achieve the desired result, the Commission should consider the following options:

Extending the mandate;

Providing for a period of reflection (such as one or two years), during this period, chairpersons should continue to consult widely and where possible provide the Commission with papers on an envisaged outcome;

Examining the working methods of the particular working group (taking into account the format of the report, annexes to the report, chairperson's perception paper, etc.).

CHAPTER SIX

Working methods of the Commission

61. Comments and recommendations in earlier sections of this report have related to various aspects of the working methods of the Commission. The Working Group acknowledges the role of the Bureau in considering organizational and administrative aspects of the Commission's work, particularly the question of time management at annual sessions. It encourages the Bureau to continue to explore proposals for improvement in these areas, to be brought before the Commission for approval as appropriate.

62. The Working Group **recommends** that the question of agenda reform should be kept under review. A new agenda was in place for the fifty-fifth session of the Commission; the Working Group considers that a review of the experience with the new agenda - including the scope for possible further reclustering of items - would be timely at the latest after the fifty-seventh session.

63. The Working Group considered the questions of documentation at the annual session and the methodology for holding consultations on resolutions. In both of these areas, the Working

Group is conscious of a certain tension. If the work of the session is to be serious, well-prepared, and provide all delegations with an opportunity for full participation, documentation needs to be available well in advance and its bulk should not overwhelm the absorption capacity of delegations. Equally, to ensure the most relevant and meaningful outcomes, the process of advance consultation on resolutions should offer scope for involvement by all interested delegations. On the other hand, the Working Group wishes to avoid any straitjacketing of procedures which might result in urgent situations of serious human rights abuse not receiving the attention they warrant at the Commission. It also acknowledges that any recommendation for changes in the approach to consultations must take realistic account of the pressures of working within the time constraints of the annual session.

Documentation

64. On documentation, the Working Group underlines the importance of compliance with the six-week rule for the availability of reports and to General Assembly resolution 53/208, which specifies the length of reports. In any situation where there has not been compliance with these provisions, there should be good reason, which should be explained to the Commission. The Working Group also refers to paragraph 30 above concerning the inclusion of government comments in country-specific reports by rapporteurs.

Consultations on resolutions

65. The Working Group is conscious that, while resolutions are a key outcome of Commission sessions, a disciplined approach is required if each text is to receive the attention it deserves in terms of preparation and follow-up. This discipline is required in relation both to numbers and length of resolutions. As to numbers, the Working Group **recommends** that biennialization be considered of as many thematic resolutions as possible. All resolutions should be kept under periodic review, with a view to termination of a resolution if the circumstances giving rise to it no longer apply. As to length, the Working Group notes that if texts are to be accessible and meaningful, they need to be drafted as clearly and succinctly as possible.

66. The Working Group also **recommends** that every effort be made to give as much advance notice as possible of the tabling of resolutions. As a matter of general practice, (i) an indication of thematic resolutions to be tabled should be made available in advance of the Commission and (ii) in the case of draft resolutions on the human rights situation in specific countries, the delegations concerned should be informed no later than the first week of the session. It is understood that, where resolutions are being tabled principally in response to developments which have arisen in the course of the session, such advance notice will not be feasible. However, in these situations, delegations initiating texts should still give as much advance notice as possible and should explain, in introducing the texts at the Commission, the particular circumstances which led to the tabling of texts on short notice.

67. As regards informal consultations on texts, the Working Group **recommends** that increased efforts be made to avoid parallel consultations on different texts. The secretariat should be informed of scheduled consultations; delegations planning to convene consultations

should check the secretariat list and make the most committed efforts to avoid overlap. Announcements of consultations should be made in plenary, making clear whether they are intended for potential co-sponsors or are open to all.

Annual theme

68. The Working Group favours the continuation of the recent practice of choosing a particular theme for one day of special dialogue at the session. It **recommends** that the theme be chosen in Bureau discussions by the Chairperson, in consultation with all the regional groups; the choice should take into account the annual theme decided on by the General Assembly for its activities.

Office of the High Commissioner for Human Rights

69. A number of the recommendations in this report refer directly to or have implications for the Office of the High Commissioner for Human Rights. Attention is specifically drawn to paragraph 8 above relating to the provision of support to mandate holders. The Working Group is conscious that the effectiveness of OHCHR is a crucial element in the overall effort to enhance the effectiveness of the Commission and its mechanisms. It recognizes that, in turn, the effectiveness of the Office depends on the availability of adequate resources, human and financial, and the optimum use of these resources.

70. The Working Group, recognizing that dramatic increases in tasks facing the Office over recent years have not been accompanied by a proportionate increase in resources, repeats the need for significant improvement in this regard. It also considers it important that the distribution of available resources within the Office should be balanced, that best United Nations practice should be followed in the recruitment of staff, and that the professionalism and impartiality of the staff should be of the highest standard if the Office is to achieve its full potential in strengthening human rights protection worldwide.

Consideration of this report by the Commission

71. The Working Group recommends that this report be considered at the earliest appropriate time at the fifty-sixth session of the Commission and, if acceptable, approved in its entirety through a single decision.

Annex

DOCUMENTS AVAILABLE OR TABLED DURING THE THREE SESSIONS OF THE WORKING GROUP ON ENHANCING THE EFFECTIVENESS OF THE MECHANISMS OF THE COMMISSION ON HUMAN RIGHTS

First session, 28 September-1 October 1999

Rationalization of the work of the Commission

E/CN.4/1999/104 and Corr.1

E/CN.4/1999/WG.19/2 (former E/CN.4/1999/120)

E/CN.4/1999/WG.19/3 (former E/CN.4/1999/124)

Special procedures

E/CN.4/2000/5. Report of the meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme (Geneva, 31 May-3 June 1999)

(No symbol) Report on capacity-building to strengthen the special procedures system of the United Nations human rights programme, prepared by Ms. Mona Rishmawi and Mr. Thomas Hammarberg

Sub-Commission on the Promotion and Protection of Human Rights

E/CN.4/Sub.2/1998/38. Enhancing the effectiveness of the Sub-Commission

E/CN.4/Sub.2/1999/47. Common position of the Sub-Commission on future tasks, length of session, working methods, composition and election of members

E/CN.4/Sub.2/1999/SR.22, para. 44. Summary record of the statement made by Mr. Marc Bossuyt concerning the methods of work of the Sub-Commission

1503 procedure

Annex 1 to document E/CN.4/Sub.2/1999/47. Summary of informal discussion by the Working Group on Communications on the recommendation concerning the 1503 procedure contained in the report of the Bureau of the fifty-fourth session of the Commission on Human Rights

Background note on the 1503 procedure prepared by the secretariat

Note for the file prepared by the secretariat on the "interpretation to be given to paragraph 10 of Economic and Social Council resolution 1503 (XLVIII)"

Relevant resolutions

General Asembly

Resolution 53/208, "Pattern of conferences" (concerning documentation and simultaneous distribution)

A/54/6. Proposed programme budget for the biennium 2000-2001, section 22, Human rights

Resolution 41/213, "Review of the efficiency of the administrative and financial functioning of the United Nations"

Aide-mémoire of the Chair dated 4 November 1999

Second session, 6-10 December 1999

Three "non papers" dealing respectively with the 1503 procedure, the Sub-Commission and standard-setting had been distributed during the open-ended consultations of 25 November 1999 by the delegations of Brazil, Canada, Chile, Japan, Finland, Latvia, New Zealand, Norway, South Africa, Spain, the United Kingdom and the United States.

A number of papers were submitted by the Like-Minded Group (LMG) before and during the session:

Proposals by the LMG on enhancing the mechanisms, 26 November 1999,

Proposals by the LMG on methods of work of CHR, 6 December 1999;

Proposal by the LMG on the rationalization and strengthening of the Commission network of thematic procedures, 7 December 1999.

The delegation of Cuba submitted a proposal at the outset of the session on new composition of the Commission. The delegation of Malaysia circulated preliminary comments on the issue of cooperation, to be read in conjunction with the LMG paper of 26 November 1999.

Aide-mémoire of the Chair dated 7 January 2000

Third session, 7-11 February 2000

Draft report of the Chair dated 24 January 2000 and in-session amendments

Revised draft report dated 10 February 2000

Two letters, dated 2 and 10 February 2000, from the Permanent Representative of Malaysia

Letter, dated 4 February 2000, from the Chairperson of the Commission on Human Rights addressed to the Permanent Representative of Malaysia

Letter, dated 10 February 2000, from Mr. Asbjørn Eide concerning the draft report

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